Supreme Court, U.S.
FILED
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BONAVITACOLA ELECTRIC CONTRACTOR, INC., ET AL.,

Petitioners,

V

BORO DEVELOPERS, INC., ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Complaint sufficiently alleged facts supporting the existence of a predicate act, a pattern of racketeering activity and injury suffered by appellants to give rise to cause of action pursuant to 18 U.S.C.A. §§1962(a) and 1962(c) [relating to the Racketeer Influenced and Corrupt Organizations Act] and pendent state claims.

LIST OF PARTIES

Petitioners

1. Bonavitacola Electric Contractor, Inc.
   1467 County Line Road
   Huntingdon Valley, PA 19006
2. Local Union No. 654 International Brotherhood of Electrical Workers
   600 Turner Industrial Way
   Ashton, PA 19014
3. Local Union No. 98 International Brotherhood of Electrical Workers
   1701 Spring Garden Street
   Philadelphia, PA 19130
4. Curtis Bell
   26 Elm Street
   Trenton, NJ 08611

Respondents

5. Boro Developers, Inc.
   400 Feheley Drive
   King of Prussia, PA
6. Frederick J. Shapiro
   400 Feheley Drive
   King of Prussia, PA
7. Bruce H. Shapiro
   400 Feheley Drive
   King of Prussia, PA

Petitioner, Bonavitacola Electric Contractor, Inc. has no parent corporation and no publicly owned company owns any stock in it. Petitioner, Local Union No. 654 International Brotherhood of Electrical Workers has no parent corporation and no publicly owned company owns any stock in it. Petitioner, Local Union No. 98 International Brotherhood of Electrical Workers has no parent corporation and no publicly owned company owns any stock in it.

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STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on December 8, 2003. The jurisdiction of this Court is invoked pursuant to 28 USC § 1254 (1).

Jurisdiction of the Court of Appeals was invoked pursuant to 28 U.S.C.S.A. §1291. Jurisdiction of the District Court was invoked pursuant to 28 U.S.C.A. § 1331 for claims arising under the laws of United States and seeking redress for violations of 18 U.S.C.A. §1964(c).

OPINIONS BELOW

The December 8, 2003 opinion of the Court of Appeals, whose judgment is herein sought to be reviewed, is an unpublished opinion, case number 03-1713 (App., *infra,* 1-18.

The prior opinion for the District Court for the Eastern District of Pennsylvania, entered February 12, 2003, is an unpublished opinion, case number 01-5508 (App., *infra,* 19-54.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

The pertinent texts of the following provisions (App. *infra,* 55-77.)

1. Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1962(a), 1962(c). ..... App. 55-56
2. Davis-Bacon Act, 40 U.S.C.A. §276 et seq .... App. 57-63
3. Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq ..... App. 64-66
4. Federal Rule of Civil Procedure 12(b)(6) .... App. 67-72
5. Pennsylvania Wage and Collection Law, 43 P.S. § 260 et seq ..... App. 73-77

AMENDED COMPLAINT

This matter arises as a result of the Court of Appeals interpretation of the sufficiency of the allegations contained within the body of the Amended Complaint (App., *infra*, 78-148) filed in the District Court by the petitioners.

STATEMENT OF THE CASE

A. The History of Litigation

This action was brought by Bonavitacola Electric Construction, Inc., Local Union No. 98, Local Union No. 654, and Curtis Bell by Complaint seeking relief pursuant to RICO, 18 U.S.C. §§ 1962(a), 1962(c), the Pennsylvania Wage and Collection Law, 43 P.S. § 260 et seq. and common tort law remedies, specifically interference of contractual relations and

unjust enrichment. On February 12, 2003, the district court entered an order granting Boro Developers, Inc., Frederick J. Shapiro and Bruce H. Shapiro's motion to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. On December 8, 2003, the Court of Appeals affirmed the district court's order. On January 20, 2004, the Court of Appeals filed an Order denying Bonavitacola Electric Construction, Inc., Local Union No. 98, Local Union No. 654, and Curtis Bell's petition for en banc review. On January 28, 2004, a mandate was issued by the Court of Appeals. This instant petition follows.

B. Factual Allegations

Appellant Bonavitacola Electric Contractor, Inc. and Appellee Boro Developers, Inc. are electrical contractors engaged in the business of providing electrical services to local, state and federal municipalities, city authorities, school districts, and commercial and industrial accounts in Pennsylvania, New Jersey and Delaware. Bonavitacola Electric is a signatory of Local Union No. 98, IBEW and a party to the multi-employer Commercial Agreement between Local Union No. 98, IBEW and the Philadelphia Division of the Penn-Del-Jersey Chapter, National Electrical Contractor's Association. Pursuant to the Commercial Agreement participating employers, such as Bonavitacola Electric, are

required to make a variety of monthly payments to Local Union No. 98 and Local Union No. 654 consisting of contributions to the various multi-employer benefit funds and the remittance of withholding of working dues and vacation funds.

To procure electrical service, maintenance and construction municipalities, city authorities and school districts solicit competitive bids from competing electrical contractors, such as Bonavitacola Electric and Boro Developers, and award the public contract to the lowest responsible bidder. In response to a request for competitive bid proposals presented by municipalities, city authorities and school districts Bonavitacola Electric and Boro Developers often find themselves competing against one another for the award of public work project contracts. Bid specifications presented by soliciting municipalities, city authorities and school districts require that participating contractors promise, attest, or otherwise certify that the participating contractor will comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et. seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §276 et seq. and pay workers employed in the performance of the contract the applicable prevailing wage. Bid specifications require that the contractor awarded the public work project submit payroll reports certifying compliance with the prevailing wage laws

to the awarding authority. Pursuant to the Pennsylvania Prevailing Wage Act the secretary of the Department establishes a minimum prevailing wage rate for each craft and classification involved in the craft. It is the responsibility of a contractor to properly classify the work performed by a worker and to pay the worker the applicable prevailing wage rate as set by the secretary of the Department of Labor.

On or about April 28, 1999, Boro Developers and Bonavitacola Electric submitted timely competitive bids to the Ridley School District to procure the award of a public contract to supply electrical construction to Ridley High School in connection with contract No. 9778-329. Boro Developers, Inc. underbid Bonavitacola Electric by approximately $81,000.00 and was awarded the public works contact by the Ridley School District to supply electrical construction to Ridley High School. On February 20, 2001, Bonavitacola Electric, Local Union No. 98, and Local Union No. 654 became aware that Boro Developers, Inc. had also been awarded public work contracts by the Neshaminy School District in the calendar year of 1993 and by the Department of the Navy in the calendar year of 1996. On February 20, 2001, Bonavitacola Electric, Local Union No. 98, and Local Union No. 654 became aware that Boro Developers engaged in a fraudulent practice of

misclassifying the nature of the work performed by workers employed in connection with the Ridley High School public work and falsely pledged to comply with prevailing wage laws- classifying workers who had performed electrical construction as having provided duties of a laborer and prepared Certified Payroll Reports reflecting the misclassification. The fraudulent practice of misclassifying workers permitted Boro Developers, Inc, to pay workers a lower wage rate then would have been properly required by the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act and underbid its competition. On or about February 20, 2001, in addition to Ridley School District project, Bonavitacola Electric, Local Union No. 98, and Local Union No. 654 became aware that Boro Developers had engaged in the fraudulent practice of misclassifying workers, falsifying certified payroll records and falsely pledged to comply with prevailing wage laws in connection with public work projects awarded to Boro Developers by the Neshaminy School District and the Department of the Navy. On or about February 20, 2001, Bonavitacola Electric, Local Union No. 98, and Local Union No. 654 became aware that Boro Developers caused the fraudulent certified payroll records to be delivered by the Postal Service or by a private or commercial interstate carrier to the awarding agencies in violation of 18 U.S.C A. § 1341

[relating to Mail Fraud]. Boro Developers submitted the bid proposal to the Ridley School District with intent to engage in the fraudulent practice of misclassifying workers' job status to subvert the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act and gain an unfair competitive advantage over other bidding contractors, such as Bonavitacola Electric. But for Boro Developers investment of the income, derived from its payment of lower wages in violation of prevailing wage laws and as a result of its fraudulent practice of misclassifying workers, into the establishment or operation of Boro Developers, Bonavitacola Electric would have been able to compete with Boro Developers on a fair and honest basis and would have been awarded the contract for public work by the Ridley School District. Had the Ridley School District awarded the contract for public work to Bonavitacola Electric, Bonavitacola Electric would have realized of income and revenue. Had the Ridley School District awarded the contract for public work to Bonavitacola Electric, Local Union No. 98 and Local Union No. 654 would have realized income in the form of contributions to the various multi-employer benefit funds and the remittance of withholding of working dues and vacation funds.

C. <u>The Essential Elements of Complaint</u>

(i) <u>Relationship of parties</u>

The Amended Complaint provides factual background and information about each of the parties, identifying Boro Developers, Inc. and Bonavitacola Electric, Inc. as companies who compete with each other for the receipt of various electrical construction, service and maintenance contracts awarded by local, state and federal government, city authorities, school districts, and commercial and industrial accounts in the Pennsylvania and New Jersey territories.

(ii) The Fraudulent Scheme

The Amended Complaint alleges that Boro Developers, Inc. engaged in a course of conduct designed to obtain the award of electrical contracts from the Ridley and Neshaminy School Districts and the Department of the Navy by fraudulently subverting the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act. As described more fully below, the pleading contains a series of fraudulent acts which viewed in the entirety establishes Boro Developers, Inc.'s scheme and plan to compete against other electrical contractors on an unfair and dishonest basis.

(iii) Circumstances Constituting Fraud

The Amended Complaint provides factual allegations detailing the circumstances constituting fraud. The Amended Complaint identifies with specificity the nature of the fraud perpetrated (1) Boro Developers, Inc. caused to be

submitted to authorities of the Ridley and Neshaminy School Districts and the Department of the Navy competitive bids to procure the awards of a public contract to supply electrical construction and falsely pledged to comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.; (2) Boro Developers, Inc. caused to submit Certified Payroll Reports with the Ridley and Neshaminy School Districts and the Department of the Navy in connection with contracts it was awarded falsely reporting the nature of the work performed and applicable wage rate associated with certain employees. The allegations in the Amended Complaint identify documentation that demonstrates that during the time period of December 1999 through June 2001 Boro Developers, Inc. falsified 77 weekly payroll reports in connection with the Ridley School District public work project; that during the time period of October 1996 through May 1997 Boro Developers, Inc. falsified 25 weekly payroll reports in connection with the Department of the Navy public work project; and that during the time period of May 1993 through August 1993 falsified 15 weekly payroll reports in connection with the Neshaminy School District public work project.

(iv) Injury

The Amended Complaint alleges that both Boro Developers, Inc and Bonavitacola Electric, Inc. submitted competitive bids to procure the award of the public work project to supply electrical construction issued by the Ridley School District and that Boro Developers, Inc. underbid Bonavitacola Electric, Inc. and was awarded the contract. The Amended Complaint provides factual allegations that but for Boro Developers, Inc. investment of income it realized from its fraudulent practices, Bonavitacola Electric, Inc. would have been able to compete on a fair and honest basis and being the second lowest bidder would have been awarded the Ridley School District contract.

(v) Use of Mail/Wire Transmissions

The Amended Complaint alleges that to effect the fraudulent scheme to procure the award of electrical construction contracts through its subversion of the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act and carry out the contracted duties Boro Developers, Inc. knowingly and repeatedly used the United States Mails and/or interstate wire transmissions in violation of 18 U.S.C.A. §1341 and §1343.

D. The Rulings Below

The district court found that the Amended Complaint sufficiently plead the element of "enterprise" required of a RICO Complaint, but that it failed to plead the predicate acts

of mail and wire fraud with sufficient particularity, finding that the Amended Complaint did not contain any details of predicate acts; failed to plead that predicate acts formed a "pattern of racketeering activity"; and failed to plead that Bonavitacola was injured as a direct result. The district court dismissed the Amended Complaint's RICO counts with prejudice.

The Court of Appeals agreed that that Amended Complaint did not plead the predicate acts of mail and wire fraud with sufficient particularity, but for reasons different than the district court. The Court of Appeals acknowledged that the Amended Complaint alleged that Boro Developers, Inc. knowingly and repeatedly utilized the United Sates mails and/or interstate wire transmissions to affect a fraudulent scheme to obtain the award to electrical construction contracts. The Court of Appeals acknowledged that the Amended Complaint alleged that Boro submitted 3 separate competitive bids to 3 different issuing authorities to gain the award public work projects and that each bid contained fraudulent promises to comply with prevailing wage laws. The Court of Appeals acknowledged that the Amended Complaint provided details of in excess of 100 certified payrolls falsified by Boro, detailing including the date of the falsification, the nature of the falsification, and identify of the document containing the falsification.

Nonetheless, the Court of Appeals ruled that the Amended Complaint did not plead the predicate acts of mail and wire fraud with sufficient particularity because the pleading did not identify any particular mail or wire transmission or how any wire transmission are connected to the fraudulent scheme. The Court of Appeals affirmed that the Amended Complaint failed to plead that predicate acts formed a "pattern of racketeering activity" and failed to plead that Bonavitacola was injured as a direct result.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED ON THE GROUND THAT THE RULING OF THE COURT OF APPEALS, THAT THE AMENDED COMPLAINT INSUFFICIENTLY PLEAD CIVIL RICO, WAS NOT A PROPER INTERPRETATION OF THE RECOGNIZED PLEADING REQUIREMENTS OF CIVIL RICO

A. RICO PLEADING REQUIREMENTS

To establish a RICO claim, a plaintiff must show "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." [1] The statute defines racketeering by a list of criminal activities that constitute predicate acts for

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1 Warden v. McLelland, 288 F.3d 105, 114 (3d. Cir.2002); Sedima, S.P.R.L v. Imrex Co., 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985).

purposes of RICO. Among these predicate acts are mail fraud and wire fraud, the predicate acts plaintiffs have alleged here. See 18 U.S.C. § 1961(a). A RICO claimant must establish a "pattern" of such predicate acts, and demonstrate the scheme caused injury. Id.

(1) Pattern of Racketeering Activity

(a) Predicate Acts

The Court of Appeals affirmed the dismissal of the Amended Complaint finding that Bonavitacola Electric had failed to sufficiently plead mail fraud as a predicate act. Arriving at its ruling, the Court of Appeals appeared to acknowledge that the Amended Complaint provides factual allegations detailing the circumstances constituting fraud and that Boro Developers, Inc. knowingly and repeatedly used the United States Mails and/or interstate wire transmissions in violation of 18 U.S.C.A. §1341 and §1343 to effect the fraudulent scheme. The Court of Appeals deemed the pleading to have insufficiently plead the predicate act of mail fraud on the basis that the Amended Complaint (1) "does not identify any particular mail or wire transmission" or (2) "allege how any wire transmission are connected to the fraudulent scheme."

If the strict standard of pleading a predicate act of mail/wire fraud in a civil-RICO as stated by the Court of Appeals which reviewed the instant appeal is correct, that is

to require the plaintiff pre-discovery to identify a particular and precise mailing or wire transmission utilized by a fraudulent offender to advance a fraudulent scheme, it would impose an almost insurmountable burden on victims of racketeering. The particulars of the dispatch or transmission mode of a communication in almost every circumstance will not be discovered by a victim until revealed through discovery.

Paragraphs 31, 34, 35, 36, 37 of the Amended Complaint specify acts of fraud engaged by Boro Developers, alleging that Boro Developers engaged in the fraudulent practice of falsely pledging to conform to prevailing wage laws and falsifying certified payrolls and other certifications which were required to be submitted to the agencies who awarded Boro Developers public work contracts. Paragraph 42 of the Amended Complaint, which accounts for some 23 pages of the Amended Complaint, and paragraphs 49 and 56 of the Amended Complaint provide notice of the fraudulent statements - identify specific payroll reports by number which contained fraudulent statements - provide the exact calendar dates to which the falsified payroll reports apply - provide an explanation of the content of the fraudulent statement - identify how the statement was false or misleading - identify who made the fraudulent statements naming Boro Developers, Frederick J. Shapiro and Bruce H.

Shapiro - identify who received the fraudulent statements naming Ridley School District, the Department of the Navy and the Neshaminy School District as the agencies to whom the fraudulent certified payroll records and other certifications were delivered. The allegations contained in paragraph 42, 49 and 56 of the Amended Complaint alleged details of predicate acts as required by Rule 9(b) and place each defendant on notice of the precise fraudulent misconduct with which they are charged.

Paragraphs 41, 48, and 55 of the Amended Complaint alleging that - to effect the fraudulent scheme and carry out the contracted duties, Boro Developers, Frederick J. Shapiro and Bruce H. Shapiro knowingly and repeatedly used the United States Mails and/or interstate wire transmissions in violation of 18 U.S.C.A. §1341 and §1343 - sets forth facts sufficient to place Boro Developers Frederick Shapiro and Bruce Shapiro on notice that false reports were delivered by mail or wire transmission. Paragraphs 31, 41, 48, and 55 of the Amended Complaint describe how the fraudulent statements contributed to the fraudulent scheme and the purpose of the fraudulent statements. The paragraphs describe that - Boro Developers, Frederick Shapiro and Bruce Shapiro engaged in a fraudulent practice of falsely attesting that Boro Developers, Inc. would comply with the Pennsylvania Prevailing Wage act and/or the Davis-Bacon

Act in an effort to deceive the Ridley and Neshaminy School Districts and the Department of the Navy, and Bonavitacola Electric by making it appear that defendant Boro Developers was a responsible and qualified contractor - that Boro Developers, Frederick Shapiro and Bruce Shapiro engaged in a course of conduct designed to obtain the award of electrical contracts from the Ridley and Neshaminy School Districts and the Department of the Navy by fraudulently subverting the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act, thereby gaining an unfair competitive advantage over its competitors.

It is well settled that allegations of fraud pursuant to the federal RICO statute, 18 U.S.C. 1961 et seq., are subject to the requirement of pleading in conformity with 9(b). The Honorable Third Circuit Court Judge James Hunter, III interpreting Rule 9(b) for the Third Circuit and its application to the RICO statute explained in Seville Industrial Machinery Corp. v Southmost Machinery Corp., [2] that:

> "Rule 9(b) requires plaintiff to plead with particularity the circumstance of the alleged fraud in order to place the defendants on notice of the precise

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2 Seville Industrial Machinery Corp. v Southmost Machinery Corp., 742 F.2d 786 (3rd Cir. 1984), cert denied, 496 U.S. 1211, 105 S.Ct. 1179, 84 L.Ed.2d 327 (1985)

> misconduct with which they are charged, and to safeguard defendants against spurious charges of immoral and fraudulent behavior. It is certainly true that the allegations of date, place, or time, fulfill these functions, but nothing in the rule requires them. Plaintiffs are free to use alternative means of injecting precision and some measure of substantiation into their allegations of fraud."

In the instant matter appellants have provided the defendants with more than adequate notice of the alleged fraud. Appellants' Amended Complaint has detailed the nature of the false and misleading statements, the source documents reflecting the false and misleading statements, the location of the false and misleading statements, the dates of the false and misleading statements, and the manner in which the statements were false and misleading. The facts contained in the pleading direct Boro Developers, Frederick Shapiro and Bruce Shapiro to the existence of specific documents generated, prepared, executed or otherwise certified by Boro Developers, Frederick Shapiro and Bruce Shapiro which evidence the fraud which is the subject matter of Bonavitacola Electric, Local Union No. 98 and Local Union No. 654's claims. The pleaded facts afford Boro Developers, Frederick Shapiro and Bruce Shapiro notice as

to which actions or communications are alleged to have been fraudulent in conformity with notice requirements of Rule 9(b). The pleading contains factual allegations which are specific and precise enough to give fair notice to Boro Developers, Frederick Shapiro and Bruce Shapiro and permit the preparation of a responsive pleading. The Amended Complaint conforms to the pleading standards required of plaintiffs seeking to advance a fraud based RICO complaint in the Third Circuit. Accordingly, the rule of pleading as announced by the reviewing Court of Appeal's decision is not a proper interpretation of the requirements of civil RICO pleading practice. The Court of Appeal subjected the allegations of predicate acts of mail fraud set forth in the Amended Complaint to too strict a scrutiny. Construing the Amended Complaint in light most favorable to Bonavitacola Electric, Local-Union No. 98 and Local Union No. 654, the Amended Complaint has alleged the fraud-based offenses with sufficient particularity to withstand a motion to dismiss under Rule 9(b).

(b) Relatedness and Continuity

The Court of Appeals affirmed the dismissal of the Amended Complaint finding that as a result the Amended Complaint having failed to adequately plead predicate acts of mail fraud, that the pleading alleges only 3 separate non-related fraudulent transactions effected by Boro Developers, Inc.

The term "pattern of racketeering activity" is defined as "at least two acts of racketeering activity" within a ten year period. 18 U.S.C. Sec. 1961(5). To prove a pattern of activity a plaintiff must show that the racketeering predicates are related and that they amount to or pose a threat of continued criminal activity. [3] Accordingly, a plaintiff must show both relatedness and continuity. [4] Under the "relatedness" requirement, predicate acts are related if they have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events. [5] The "continuity" prong of the analysis requires "continuity of racketeering activity, or its threat. Tabas, Id at 1295. It has been explained by the Third Circuit Court of Appeals that continuity may be either closed-ended, referring to a closed period of repeated conduct, or open-ended meaning past conduct that by its nature projects into the future with a threat of repetition. With regard to close-ended conduct, the related predicates must extend over a long period of time, generally exceeding one year. Id. at

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3 H.J., Inc. v Northwestern Bell Telephone Company, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989).
4 Tabas v Tabas, 47 F.3d 1280 (3rd Cir. 1995), cert denied, --- U.S. ---, 115 S.Ct. 2269, 132 L.Ed.2d 275 (1995).
5 Leonard S. Feinberg, Inc. v Central Asi Capital Corporation, Limited, 1997 WL 230812 (E.D.Pa.).

1293. Opened ended continuity is established when the commission of the predicates acts is a regular way of conducting defendant's ongoing business or of conducting or participating in an ongoing and legitimate RICO enterprise. Id at 1295.

In the instant matter paragraphs 31, 41, 42, 48, 49, 55, and 56 of the Amended Complaint set forth allegations that Boro Developers have repeatedly utilized a series of the mail/wire transmissions to further a fraudulent scheme to subvert the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act in an effort to gain a competitive advantage over other electrical contractors who bid for public works contracts. The predicate acts of mail/wire fraud are alleged in the Amended Complaint to be repeated, alleged to have a similar purpose, result, and method of commission. The allegations of the Amended Complaint demonstrate that the predicate acts have been plead with sufficiency and are interrelated and not isolated acts of Boro Developers. The actions of Boro Developers as alleged meet the "relatedness" of RICO pleading requirement as defined by the Third Circuit.

The allegations of the Complaint demonstrate that Boro Developers, Inc. engaged in predicate acts of racketeering which had the same or similar purposes, results, and method of commission in connection with the

procurement and management of 3 different electrical construction contracts, which were issued by 3 different public agencies, in 3 different geographic areas, and spanned a time period of 8 years. The totality of the allegations set forth in the Complaint suggest that Boro Developers routinely does business through the use of the predicate acts or that there is real threat that Boro Developers will do so in the future. Construing the Amended Complaint in light most favorable to Bonavitacola Electric, Local Union No. 98 and Local Union No. 654, the Amended Complaint has alleged, the predicate acts of Boro Developers as alleged in the Complaint meet the relatedness continuity and requirement as defined by the United States Supreme Court.

(2) INJURY

(a) Bonavitacola Electric

The Court of Appeal dismissed the Amended Complaint upon the finding that Bonavitacola Electric, Inc. Local Union No. 98 and Local Union No. 654 had no standing to bring the suit on the grounds that their injury did not bear a direct relation to the racketeering activity of Boro Developers. Arriving at its conclusion the Court of Appeals acknowledged and accepted, by way of its citation of Commercial Cleaning Services v Collin Services Systems, Inc., 271 F.3d 374 (2nd Cir. 2001), that standing to bring suit pursuant to the RICO statute has been conferred upon

plaintiffs similarly situated to Bonavitacola Electric. In Commercial Cleaning Services , a cleaning service who was the second lowest bidder on a competitively bid janitorial service contract, brought suit against its direct competitor alleging that the competitor engaged in a pattern of racketeering through an illegal immigrant hiring scheme which allowed the competitor to gain an unfair competitive advantage over the cleaning service. The cleaning service alleged that but for the competitor's pattern of racketeering, the contract awarded to his competitor would have been awarded to the cleaning service. The United States Court of Appeals, Second Circuit, ruled that the cleaning service suffered a direct injury pursuant to the RICO statute as a result of its competitor's pattern of racketeering activity. The paragraphs of the Amended Complaint allege that Bonavitacola Electric, Inc. similar to the plaintiff in Commercial Cleaning Services was the second lowest bidder on public work projects who was underbid by a competitor engaged in a pattern of racketeering. The paragraphs of the Amended Complaint allege that Bonavitacola Electric, Inc., similar to the plaintiff in Commercial Cleaning Services, that but for the competitor's pattern of racketeering Bonavitacola Electric, would have able to compete in a fair and honest basis and would have been awarded the contract furnished by Ridley School District. There appears no

difference in the injury alleged to have been suffered by the victim of racketeering in the Commercial Cleaning Services and the instant case. The Amended Complaint alleges that Boro Developers was able to underbid its competition because its scheme to misclassify the class of a worker permitted it to pay less wages for electrical construction. The Complaint alleges that Boro Developers was able to qualify for public work projects because it falsely pledged to comply with prevailing wage laws. Accordingly, the Court of Appeal's rule of pleading that the Amended Complaint need indicate the degree or extent to which Boro's bid was lower than Bonavitacola' bid or specifically detail whether Boro's bid had lower labor costs than Bonavitacola's bid to satisfy the notice pleading requirement is not a proper interpretation of the requirements of civil RICO pleading practice. The Court of Appeal subjected the allegations of injury as set forth in the Amended Complaint to a standard of scrutiny not applicable to notice pleading. Construing the Amended Complaint in light most favorable to Bonavitacola Electric, the Amended Complaint has alleged injury with sufficient particularity to withstand a motion to dismiss under Rule 12(b)(6).

(b) Local Union No. 98 & Local Union No. 654

The Court of Appeal entered a finding that injury suffered by the labor unions was indirect the on the grounds

that the Amended Complaint did not allege allegations to show how the revenues would have been realized by the unions in the event that Bonavitacola Electric had been awarded the electrical construction contract. Paragraphs 14 and 15 of the Complaint allege that Local Union No. 98 and Local Union No. 654 supplied electrical workers to Bonavitacola Electric and received an income flow from Bonavitacola Electric in the form of contributions to multi-employer benefit plans for workers employed on public work projects. The Complaint provides that Local Union No. 98 and Local Union No. 654's loss of contributions and remittance is a direct result of Bonavitacola Electric's unsuccessful bid of the public works contact. Local Union No. 98 and Local Union No. 654's loss of contributions and remittance is reasonably foreseeable, anticipated and a natural consequence of Boro Developers' RICO violation. The Court of Appeals rule of pleading requiring that the Amended Complaint need more specifically detail how the revenues would follow in the event Bonavitacola had been awarded the contract to satisfy the notice pleading requirement is not a proper interpretation of civil RICO pleading practice. The Court of Appeal subjected the allegations of injury as set forth in the Amended Complaint to a standard of scrutiny not applicable to notice pleading. Construing the Amended Complaint in light most favorable

to Local Union No. 98 and Local Union No. 654, the Amended Complaint has alleged injury with sufficient particularity to withstand a motion to dismiss under Rule 12(b)(6).

CONCLUSION

For the foregoing reasons the petitioners respectfully pray that this Honorable Court exercise its broad power to minister justice and grant the petition for a writ of certiorari.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1713

BONAVITACOLA ELECTRIC CONTRACTOR, INC.; LOCAL UNION NO. 654 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; LOCAL UNION NO. 98 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; CURTIS BELL

v.

BORO DEVELOPERS, INC; FREDERICK J. SHAPIRO; BRUCE H. SHAPIRO

Bonavitacola Electric Contractor;
Local Union No. 98, International
Brotherhood of Electrical Workers,

Appellants

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 01-cv-05508)
District Judge: Honorable Michael M. Baylson

Submitted Under Third Circuit LAR 34.1 (a)
October 30, 2003

Before: SCIRICA, Chief Judge,
NYGAARD and AMBRO, Circuit Judges

(Opinion filed December 8, 2003)

OPINION

AMBRO, Circuit Judge

Bonavitacola Electric Contractor appeals the District Court's order dismissing its amended complaint for failing to state a claim under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C §§ 1961-68 ("RICO"). Because we conclude that the amended complaint fails to allege sufficiently that the defendant committed a pattern of racketeering activity as required under RICO and that the plaintiffs suffered direct injury as a result, we affirm the judgment of the District Court.

I

Facts and Procedural Posture

On October 31,2001, Bonavitacola Electric Contractor, along with two labor unions and one individual,[1] filed a 27-count complaint against a competitor electric

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[1] For convenience we will use "Bonavitacola" as a collective reference to the four plaintiff-appellants: Bonavitacola Electric Contractor; Local Union No. 654, International Brotherhood of Electric Workers; Local Union No. 98, International Brotherhood of Electric Workers; and Curtis Bell, an employee of Boro Developers, Inc.

contractor, Boro Developers, Inc., and two of Boro's officers-employees, Frank and Bruce Shapiro.[2] Bonavitacola alleged that, over a period of ten years, Boro submitted competitive bids to perform electrical work on public projects by the Ridley School District, the Neshaminy School District, and the United States Department of the Navy. Bonavitacola alleges that each of these three bids contained Boro's "fraudulent" promise to comply with prevailing wage law (the Pennsylvania Prevailing Wage Act, 43 Pa. Stat. Ann. § 165-1, and the federal Davis-Bacon Act, 40 U.S.C. §§ 276 *et seq.),* and as a result Boro was awarded each of the three contracts over Bonavitacola, the second highest bidder. Bonavitacola further alleges that, in connection with each of the three projects, Boro submitted numerous certified payroll reports (requirements under prevailing wage law) that fraudulently misclassified certain employees' activity as "labor" rather than "electrical." Bonavitacola generally alleges that Boro's conduct involved "repeated" (but unspecified) instances of mail fraud and wire fraud, which constitute a predicate act under RICO. Bonavitacola and the labor unions brought 24 counts against Boro and the Shapiros under §§ 1962(a), 1962(c), and

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[2] For convenience we will use "Boro" as a collective reference to the defendants-appellees.

1962(d)[3] of RICO as well as two counts under state law. In addition, co-plaintiff Curtis Bell brought one count against Boro and the Shapiros under state prevailing wage law.

In October 2002, Judge Baylson of the United States District Court for the Eastern District of Pennsylvania granted Boro's motion to dismiss Bonavitacola's complaint. *See Bonavitacola Elec. Contractor, Inc.* v. *Boro Developers, Inc.*, No. CIV.A.01-5508, 2002 WL 31388806 (E.D. Pa. Oct. 23, 2002) *("Bonavitacola F")*. Specifically, the District Court found that the complaint did not state a claim under RICO because it (1) did not contain any specific allegation of acts of mail or wire fraud, (2) failed to explain how any of the alleged acts by the defendants furthered the scheme to defraud or was incident to an essential part of that scheme, and (3) contained insufficient evidence as to enterprise, relatedness, and continuity. *Id.* *4. But the District Court also granted Bonavitacola leave to amend the complaint, and, in the form of a detailed requirements for including a "RICO Case Statement," instructed Bonavitacola on filing a sufficient RICO complaint. *Id.* *5.

Bonavitacola filed an Amended Complaint on November 11, 2002, but made very few substantive changes from the original complaint. It added numerous

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[3] Eight counts alleging violations of § 1962(d) of RICO were subsequently withdrawn on July 1, 2002.

subparagraphs specifically identifying each of the various certified payroll reports that allegedly misclassified the activities of either Curtis Bell or an "unnamed black male employee" as "labor" rather than "electrical." *See* Amended Complaint, ¶¶ 42A(2) (a)-(aaaa), 42B(2)(a)-(y) and 42C(2)(a)-(p) (App. at AI9-A44). Bonavitacola also added a brief discussion of supplemental jurisdiction, removed the § 1962(d) Counts (XVI-XXIV) that the parties had previously agreed to strike, and added an allegation (¶ 109) to Curtis Bell's state law claim (Count XVIII). But Bonavitacola did not include the RICO Case Statement as the District Court had required.

In February 2003, the District Court granted Boro's motion to dismiss the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6). *See Bonavitacola Elec. Contractor, Inc. v. Boro Developers, Inc.*, No. CIV.A.01-5508, 2003 WL 329145 (B.D. Pa. Feb. 12, 2003) *("Bonavitacola II).* The District Court found that the Amended Complaint sufficiently pled the element of "enterprise" required of a RICO complaint, but that it failed to plead the predicate acts of mail and wire fraud with requisite particularity, failed to plead that predicate acts formed a "pattern of racketeering activity," and failed to plead that Bonavitacola was injured as a direct result. The District Court also held that Bonavitacola could not base its

RICO claims on alleged violations of the Davis-Bacon Act because it does not provide a private right of action. The District Court dismissed the Amended Complaint's RICO counts with prejudice and dismissed the state law counts without prejudice. Bonavitacola appeals the District Court's finding that the Amended Complaint failed to plead predicate acts, pattern of racketeering activity, and injury.

II

Standard of Review

Our review of the order dismissing the Amended Complaint for failing to state a claim under RICO is plenary. *Bald Eagle Area Sch. Dist. v. Keystone Financial, Inc.*, 189 F.3d 321,327 (3d Cir. 1999). In applying the same standard as the District Court, we will construe the complaint liberally, take all material allegations as admitted, and draw all reasonable inferences in favor of the plaintiffs. *Id.* "We will not affirm the dismissal unless the plaintiffs could prove no set of facts that would entitle them to relief." *Id.* (citing *Univ. of Maryland at Baltimore v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1537-38 (3d Cir. 1993)).

III

RICO Pleading Requirements

RICO provides a private civil action to recover treble damages for injuries resulting from a defendant's "racketeering activities" in violation of RICO's substantive provisions. 18 U.S.C. § 1964(c). Under one such substantive provision, it is unlawful to conduct an enterprise through a pattern of racketeering activities. *Id.* § 1962(c). Under another, it is unlawful to invest income derived from a pattern of racketeering activities. *Id.* § 1962(a). To allege successfully a violation under either of these subsections, a plaintiff must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity" as well as an injury resulting from the conduct constituting a violation. *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 496 (1985). "Racketeering activity" means one of the various predicate acts identified in the statute, including acts "indictable" under the federal mail and wire fraud statutes. 18 U.S.C. § 1961(1). When fraud is the predicate act, the heightened pleading requirement of Federal Rule of Civil Procedure 9(b) applies. *Warden v. McLelland,* 288 F.3d 105,114 & n.6 (3d Cir. 2002). A "pattern of racketeering activity means" at least two predicate acts that "are related and that amount to or pose a threat of continued criminal activity." *H.J., Inc. v. Northwestern Bell Tete. Co.,* 492 U.S. 229, 239 (1989).

IV

Analysis of the Amended Complaint

The District Court dismissed the Amended Complaint for failing to state a claim under § 1962(a) and § 1962(c) of *RICO.* We agree with the District Court that the Amended Complaint did not plead the predicate acts of mail and wire fraud with particularity and did not adequately allege a "pattern of racketeering activity" that directly resulted in Bonavitacola's direct injury.

A. Predicate Act

Bonavitacola attempts to plead that Boro committed mail or wire fraud as a predicate act to violations of *RICO.* Mail or wire fraud consists of (1) a scheme to defraud, (2) use of the mail or interstate wires to further that scheme, and (3) fraudulent intent. *United States v. Pharis,* 298 F.3d 228,233 (3d Cir. 2002). When mail or wire fraud is the predicate act to a *RICO* violation, the plaintiff must allege that mailings are related to the underlying fraudulent scheme, even though mailings need not be an essential element of the scheme and need not themselves contain any misrepresentations. *Tabas v. Tabas,* 47 F.3d 1280, 1294 & n. 18 (3d Cir. 1995); *Kehr Packages, Inc. v. Fide/cor, Inc.,* 926 Fold 1406, 1413 (3d Cir. 1991). Under Federal Rule of Civil

Procedure 9(b), the circumstances constituting fraud must be pleaded with particularity, though fraudulent intent may be generally alleged. In the context of *RICO* mail fraud allegations, this means that the complaint must "identify the purpose of the mailing within the defendant's fraudulent scheme and specify the fraudulent statement, the time, place, and speaker and content of the alleged misrepresentation." *Annulli v. Panikkar,* 200 F.3d 189, 2001 n.10 (3d Cir. 1999). Put another way, the "who, what, when and where details of the alleged fraud" are required. *Allen Neurosurgical Assoc., Inc. v. Lehigh Valley Health Network,* No. CIV-A-99-4653, 2001 WL 41143 (E.D. Pa. Jan. 18, 2001).

The Amended Complaint alleges that "the defendant Boro Developers, Inc. knowingly and repeatedly used the United States mails and/or interstate wire transmissions in violation of 18 U.S.C.A. § 1341 and § 1343." Amended Complaint ¶ 41. The Amended Complaint also alleges that each of the three bids contained a fraudulent promise to comply with prevailing wage law and that Boro falsified over one hundred certified payroll reports in connection with the three contracts. But the Amended Complaint does not identify any particular mail or wire transmissions or allege how any mail or wire transmissions are connected to a fraudulent scheme.

Even if Bonavitacola had alleged in the Amended Complaint that the certified payroll reports were the underlying U.S. mail or interstate wire transmissions, it is not at all clear from the Amended Complaint how they relate to an underlying fraudulent scheme. Bonavitacola alleges that the intent of the fraudulent scheme was "to obtain the award of electrical contracts from the Ridley and Neshaminy School Districts and the Department of the Navy." Amended Complaint ¶ 41. But the Amended Complaint contains no alleged facts connecting the certified payroll reports, which Boro submitted after being awarded the contract, to the alleged purpose of the fraudulent scheme, which was to obtain the award of the contracts.

B. Pattern of Racketeering

To plead sufficiently the requisite "pattern of racketeering activity," a *RICO* plaintiff must allege predicate acts that are related and amount to or pose a threat of continued criminal activity. *H.J. Inc.*, 492 U.S. at 239.

1. Relatedness

Predicate acts are related if they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." *H.J. Inc.*, 492

U.S. at 240; *Tabas,* 47 F.3d at 1292. In *Kehr Packages,* we observed that relatedness "will nearly always be satisfied in cases alleging at least two acts of mail fraud stemming from the same fraudulent transaction." 926 F.2d at 1414; *see also Banks v. Walk,* 918 F.2d 418, 422 (3d Cir. 1990) (unspecified acts of mail and wire fraud all related to a single real estate transaction satisfied relatedness requirement).

As discussed above, the Amended Complaint fails to allege predicate acts of mail or wire fraud. At best, the Amended Complaint alleges three separate fraudulent transactions: the Ridley School District bid, the Neshaminy School District bid, and the U. S. Navy bid, each of which contained the allegedly false promise to comply with prevailing wage law. Each of those bids is related to the various, allegedly falsified certified payroll reports prepared for the same project. *See Kehr Packages,* 926 F.2d at 1415.

However, the Amended Complaint does not allege that the three fraudulent transactions are related to each other. Bonavitacola ignored the District Court's clear instructions in *Bonavitacola I* to state in the Amended Complaint "how the alleged predicate acts relate to each other as part of a common plan." *Bonavitacola I,* at * 5. Rather, Bonavitacola retained the initial complaint's vague and conclusory allegations that predicate acts of fraud were related by their similar purpose of procuring electrical

construction contracts. This is not an allegation of common plan, and without more-such as allegations detailing the transactions' similar results, participants, victims, manner of commission, or other characteristics-will not satisfy the relatedness requirement. *H.J Inc.*, 492 U.S. at 240.

2. Continuity

Continuity is "both a closed- and open-ended concept, referring either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition." *H.J., Inc.*, 492 U.S. at 241. For closed-ended continuity, a RICO plaintiff must allege "a series of related predicates lasting a 'substantial period of time.'" *Hughes* v. *Consol-Penn. Coal Co.*, 945 F.2d 594,609 (3d Cir. 1991) (citing *HJ.,Inc.*, 492 U.S. at 242). For open-ended continuity, the plaintiff must allege a "threat of continuity" that "exists when the predicate acts are a part of defendant's 'regular way of doing business.'" *Hughes*, 945 F.2d at 609-10 (citing *H.J., Inc.*, 492 U.S. at 242).

Finding no relatedness between the three separate transactions, we cannot measure continuity by collectively considering the numerous alleged acts of deceit associated with all three bids, which spanned eight years. Thus the Amended Complaint lacks predicate acts occurring over a "substantial period of time" necessary *for* a proper allegation

of closed-ended continuity.

Additionally, nothing in the Amended Complaint suggests that Boro's alleged fraudulent transactions are its regular way of doing business. There is no allegation that Boro submitted other bids in which they falsely promised to comply with prevailing wage law in order to get that business. As the District Court properly noted, "[i]f, *for* example, over these eight years, Defendants had 1 *00* different contracts, the fact that they may have committed fraud as to three of them (Ridley School District, Neshaminy School District, and the Department of Navy) would be plainly insufficient to support a scheme under RICO." *See Kehr Packages,* 926 F.2d at 1418 (with "no indication that [defendants] made other false statements or treated other customers in a similar manner," the complaint did not indicate that fraud was a regular way of doing business).

Thus, the Amended Complaint did not allege fraud that was related or continuous so as to plead sufficiently the "pattern of racketeering activity" element of a RICO claim.

C. Injury

To have standing, a RICO plaintiff must also show that the alleged RICO violations proximately caused injury to the plaintiffs business property. 18 D.S.C. § 1964(c); *Holmes* v. *Sec. Investor Protection Corp.,* 503 U.S. 258, 268

(1992). An indirect injury remotely caused by the RICO violation will not satisfy proximate cause requirement.

Bonavitacola's alleged injury is that, as a result of Boro's false promise to comply with the prevailing wage law, Bonavitacola was denied the opportunity to compete with Boro "on a fair and honest basis," and consequently lost income and profits that it would have earned if it had been awarded the Ridley School District[4] contract.

The Amended Complaint does not allege how Boro' s promise to comply with prevailing wage law influenced Ridley School District's decision to award its contract to Boro and not Bonavitacola. For example, the Amended Complaint does not indicate the extent to which Boro's bid was lower than Bonavitacola's bid or whether Boro's bid had lower labor costs than Bonavitacola's bid. Nor does it allege that Boro's bid incorporated any misclassified wages, or that the amount by which Boro underbid Bonavitacola was. attributable to misclassified wages. In contrast, the Second Circuit's decision in *Commercial Cleaning Services, LLC* v. *Colin Service Systems, Inc.* (which Bonavitacola cites in support of its direct-injury argument) illustrates proper allegations of competitor-injury in a RICO complaint: "The

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[4] Bonavitacola does not explain why only the Ridley School District bid formed the basis for its damages allegations.

complaint asserts that Pratt & Whitney chose Colin because Colin submitted 'significantly lower' bids in a 'highly competitive' price sensitive market. According to the complaint, Colin was able to underbid its competitors because its scheme to hire illegal immigrant workers permitted it to pay well below the prevailing wage for legal workers." 271 F.3d 374,382 (2d Cir. 2001). A similar description does not apply to Bonavitacola's complaint.

Furthermore, judging by the facts in the Amended Complaint, Boro' s promise to comply with prevailing wage law did not become a false promise until sometime *after* Boro had been awarded the bid, when it began to submit (allegedly) false certified payroll reports. As Bonavitacola had already lost the bid, it is not at all obvious what its injury could have been. Nor is any explanation provided in the Amended Complaint.

The labor unions' alleged injury is even more remote than Bonavitacola's. The unions state that they would have received additional contributions to their multi-employer benefit plans for employees if Bonavitacola had been awarded the contract. The District Court correctly noted that the Amended Complaint "does not state the requisite allegations to show how the contract revenues following to Plaintiff Bonavitacola, assuming it had been awarded any contract, would have resulted in benefit to the plaintiff labor

unions." *Bonavitacola II,* at *12. Nor does the Amended Complaint allege that the labor unions have standing to sue for "these types of damages which, presumably are for the benefit of the union members." *Id.*

For these reasons, we conclude that neither Bonavitacola nor the labor unions have alleged the direct injury required for standing under RICO.

V

Conclusion

We conclude that Bonavitacola did not allege predicate acts of fraud with the requisite particularity, did not allege a "pattern of racketeering activity" and did not allege direct injury required for standing under RICO. Thus we affirm the judgment of the District Court.

TO THE CLERK:

Please file the foregoing Opinion.

By the Court,

/s/ Thomas L. Ambro Circuit

Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-1713

BONAVITACOLA ELECTRIC CONTRACTOR, INC.; LOCAL UNION NO. 654 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; LOCAL UNION NO. 98 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; CURTIS BELL

v.

BORO DEVELOPERS, INC; FREDERICK J. SHAPIRO; BRUCE H. SHAPIRO

Bonavitacola Electric Contractor;
Local Union No. 98, International
Brotherhood of Electrical Workers,

Appellants

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 01-cv-05508)
District Judge: Honorable Michael M. Baylson

Submitted Under Third Circuit LAR 34.1 (a)
October 30, 2003

Before: SCIRICA, Chief Judge,
NYGAARD and AMBRO, Circuit Judges

JUDGMENT

This cause came on to be heard on the record before the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on October 30, 2003.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the judgment of the District Court dated February 13, 2003, is hereby affirmed. Costs taxed against appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

"/s/ Marcio M. Wilson"

Clerk

Dated: December 8, 2003

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BONAVITACOLA ELECTRIC CONTRACTOR, INC., et.al.	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	
BORO DEVELOPERS, INC., et al.,	:	NO. 01-5508
Defendants.	:	

MEMORANDUM

Baylson, J. **February 12, 2003**

The issue presented is whether Plaintiffs' RICO Complaint should be dismissed for failure to state a claim upon which relief can be granted. The Plaintiffs in the instant action are: (1) Bonavitacola Eclectic Contractor, Inc. ("Bonavitacola'), a contractor that provides electrical services to governmental agencies and commercial and *industrial* accounts in Pennsylvania and New Jersey; (2) two labor unions, Local Union No. 654, International Brotherhood of Electrical Workers and Local Union No. 98, International Brotherhood of Electrical Workers, which provide labor to electrical contractors such as Bonavitacola;

and (3) Curtis Bell, an individual who is identified as an employee, agent, servant or representative of one of the Defendants, Boro Developers, Inc. (collectively, "Plaintiffs").

The Defendants are identified as Boro Developers, Inc. ("Boro"), a corporation engaged in the business of providing electrical services to governmental and private accounts, and two individuals, Frederick J, Shapiro and Bruce J, Shapiro, both alleged to be officers and employees of Defendant Boro, as Chief Executive Officer and Chief Operating Officer of Boro, respectively, (collectively "Defendants").

Plaintiffs brought their original Complaint under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 ("RICO") (24 Counts)[5], and state law claims (interference with prospective contractual relations, unjust enrichment and under 43 PA. STAT. ANN. § 260 (3 Counts)) In Bonavitacola Elec. Contractor. Inc. v. Boro Developers. Inc., No. CIV.A.Ol-5508, 2002 WL 31388806 (E.D. Pa. Oct. 23, 2002) ("Bonavitacola I"), this Court granted Defendants' Motion to Dismiss Plaintiffs' Complaint, but granted leave to amend. This Court found that the Complaint was "woefully short of the ... RICO

[5] The parties agreed to withdraw Counts XVI though XXIV of the Complaint, which allege violations of § 1962(d) of RICO, *on* July, 2002.

requirements" because the Complaint; (1) did not contain any specific allegation of acts of mail or wire fraud; (2) failed to explain how any of the alleged acts by Defendants furthered the scheme to defraud or was incident to an essential part of that scheme; and (3) contained insufficient allegations as to enterprise, relatedness and continuity. Id. at *4. Although this Court believed that it would have been justified in dismissing the Complaint -with prejudice, the Court allowed Plaintiffs to amend their Complaint and set forth specific guidelines for Plaintiffs to follow in amending their Complaint, including a requirement that the Amended Complaint, include or be accompanied by a "RICO Case Statement," as described in Bonavitacola I. Id.'

Plaintiffs filed their Amended Complaint on November 11, 2002, and Defendants filed their Motion to Dismiss Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on December 3,2002. For the reasons set forth below, the Court will grant Defendants' Motion to Dismiss.

I. Legal Standard on Rule 12(b)(6) Motion to Dismiss

When deciding a. motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court may look only to the facts alleged in the complaint and its attachments. See, Lordan v.Fox, Rothschild. O'Brien & Frankel; 20 F.3d 1251. 1261 (3d Cir. 1994). The court must

accept as true all well pleaded allegations in the complaint and view them in the light most favorable to the plaintiff. See Angelastro v. Prudential-Bache Sec. Inc.; 764 F.2d 939,944 (3d Cir. 1985). A Rule 12(b)(6) motion will be granted only when it is certain that no relief could be granted under any set of facts that could be proved by the plaintiff. See Ransom v. MalDlzzo, 848 F.2d 398, 401 (3d *Cir.* 1988).

II. Allegations of the Amended Complaint

As in its original Complaint, Plaintiff Bonavitacola alleges it is a competitor of Boro, and that, over a period of years. Defendant Boro has solicited and received business through competitive bids to various public entities located in this district, and also the U.S. Department of Navy. A requirement of the bids is that the contractor comply with the Pennsylvania Prevailing Wage Act, 43 PA, STAT. ANN. § 165-1 et seq., and the Davis-Bacon Act, 40 U.S.C. § 276 et seq. The Amended Complaint alleges that Defendants, in submitting bids on behalf of Defendant Boro, certified that Boro would comply with the aforesaid Pennsylvania and federal statutes, but knowingly and willfully submitted false and fraudulently made bids, and Defendants engaged in a fraudulent practice of falsifying Certified Payroll Reports and other certifications, which were required to be submitted to the awarding agencies. (Am. Comp. ¶ 34.) The Amended

Complaint alleges that Defendant Boro received these awards based upon the false certifications.

The first nine Counts of the Amended Complaint charge a violation of § 1962(a) of RICO. In the first Count, which is the most detailed, Plaintiff Bonavitacola alleges that Defendant Boro submitted false certifications to the Ridley School District, the U.S. Department of Navy and the Neshaminy School District. In Bonavitacola I, the Court found that, although the Complaint alleged conclusory terms that Defendants committed mail or wire fraud there were no specifics of dates of mailings or wire transmissions, and the Complaint was completely conclusory, ignoring well settled requirements for RICO pleadings in many cases previously decided in this district. Bonavitacola I, 2002 WL 31388806, at *1.

The remaining eight Counts under § 1962(a) make claims for each of the Plaintiffs (except Curtis Bell) against the three Defendants, charged individually.

Counts X through XV (either specifically or by incorporating previous paragraphs by reference) charge violations of § 1962(c) of RICO by the Plaintiffs (except Curtis Bell) against each Defendant individually, and allege in each Count that the individual Defendant "conducted or participated in the conduct of the affairs of Boro through a pattern of racketeering as aforementioned." In the Amended

Complaint, Plaintiffs allege that Defendant Boro constituted an "enterprise" (Am. Comp. ¶ 39) and that Boro, Frederick Shapiro, and Bruce Shapiro, are each a "person capable *of* holding a. beneficial interest in property within the meaning of 18 USCA § 1961(3)." Id. ¶¶ 40, 47, 54.

Count XVI is brought by Plaintiff Bonavitacola against all Defendants for interference with prospective contractual relations; Count XVII is brought by Plaintiff Bonavitacola against all Defendants for unjust enrichment; and Count XVIII is brought by Plaintiff Curtis Bell against all Defendants charging a violation of 43 PA. STAT. ANN, § 260.

III. Changes Made in the Amended Complaint

Plaintiffs made very few substantive changes from the original to the Amended Complaint, and failed to include a RICO case statement, despite this Court's clear mandate that they do so. Although Plaintiffs restructured the allegations under "Jurisdiction and Venue," the only substantive change is the inclusion of a brief discussion on supplemental jurisdiction.

Plaintiffs added subparagraphs (a)-(aaaa) under paragraph 42(A)(2), subparagraphs (a)-(y) under paragraph 42(B)(2), and subparagraphs (a)-(p) under paragraph 42(C)(2). Although most, but not all, of the new

subparagraphs itemize specific Certified Payroll Reports and dates, Plaintiffs do not set forth any details on the requirements of RICQ, as specified in Bonavitacola 1.

The final changes made in the Amended Complaint are that Counts XVI-XXIV of the original Complaint, which alleged violations of § 1962(d) of RICO, are not included in the Amended Complaint. Also, Plaintiffs added paragraph 109 in Count XVIII of the Amended Complaint alleging that Defendants "agreed to pay Curtis Bell those wages and multi-employer benefits due to him as a result of his performance of electrical constructed" at some job sites.

IV. Sufficiency of the Amended Complaint

As noted above, Plaintiffs[6] now assert RICO violations pursuant to 18 U.S.C. § 1962(a) and (c), which state in relevant part:

> (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or though collection of an unlawful debt in which such person has participated as a principal within the meaning of § 2, Title 18, United States Code, to use or invest,

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[6] Only Plaintiffs Bonavitacola, Local Union No. 654, and Local Union No. 98 assert RICO claims. Plaintiff Curtis Bell only asserts a violation of 43 PA. STAT. ANN. § 260 by all Defendants.

> directly or indirectly, any part of such income or the proceeds of such income in acquisition of any interest in or the establishment or operation of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
>
> (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1962. To successfully plead a civil RICO violation under these subsections, a plaintiff must allege either "a pattern of racketeering activity" or the "collection *of* an unlawful debt." H.J. Inc. v. Northwestern Bell Tele. Co. 492 U.S. 229, 232, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989); Agency Holding Corp. v. Malley-Dllff & Assoc.. Inc.. 483 U.S. 143; 154, 107 S. Ct. 2759. 97 L. Ed. 2d 121 (1987) ("[t]he heart of any RICO complaint is the allegation of a pattern of racketeering.").

To be successful in a complaint relying on a pattern of racketeering activity, a plaintiff must allege the details required in the court's description of a RICO case statement (1) conduct (2) of an enterprise (3) through a pattern (4) or

racketeering activity. Warden v. McLelland, 288 F.3d 105, 114 (3d Cir. 2002).

A. Enterprise

1. Section 1962(c)

Under § 1962(c), RICO liability requires conduct by a "person employed by or associated with any enterprise." 18 U.S.C. § 1962(c). "Person" includes "any individual or entity capable of holding a legal or beneficial interest in property." 18 D.S.C. § 1961(3). "Enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C. § 1961 (4). In order to allege a RICO enterprise, the Third Circuit has identified three elements: (1) that there be an ongoing organization; (2) that the associates function as an ongoing unit; and (3) that the enterprise is an entity separate and apart from the pattern of activity in which it engages. Curtin v. Tillev Fire Equipment Co., No, Crv,A.99-2373. 1999 U.S. Dist. LEXIS 19467) at *10 (E.D. Pa. Dec. 14, 1999) (citing U.S. v, Console. 13 F.3d 641, 650 (3d Cir. 1993), cert. denied sub nom., Curcio v. U.S., 511 U.S, 1076, 114 S. Ct. 1660, 128:L. Ed.. 20. 377 (1994) and Markoff v.U.S., 513 U.S. 812. 115 S. Ct. 64, 1301. Ed. 2d 21 (1994)).

The leading case in the Third Circuit on the

distinctness requirement under § 1962(c) is Jaguar Cars. Inc. v. Royal Oaks Motor Car Co., Inc.. 46 F3d 258 (3d Cir. 1995). In that case, the Third Circuit held that the defendant "persons" must be separate and distinct from the named enterprise. However, the Third Circuit in Jaguar Cars stated:

> [W]e conclude that when officers and/or employees operate and manage a legitimate corporation, and use it to conduct, through interstate commerce, a pattern of racketeering activity those defenck"1.1At persons are properly liable under § 1962(c).

Jaguar Cars, 46 F.3d at 269. In the Amended Complaint, Plaintiffs allege that individual Defendants Frederick Shapiro and Bruce Shapiro are officers of Boro, which is alleged to be in the business of providing electrical services (Am. Comp. ¶ 9) and is both the "enterprise" (Am. Comp.¶ 39) and also a Defendant as to the claim made under § 1962(a) (Am. Comp, ¶ 9). The issue is whether Plaintiffs' allegations satisfy Jaguar Cars.

In Cedric Kushner Promotions Ltd. V. King, 533 U.S.: 158, 121 S. Ct. 2087,150 L. Ed. 2d 198 (2001). The Supreme Court upheld the Third Circuit's interpretation of § 1902(c) in Jaguar Cars, and rejected the views of other circuit courts requiring much more distinctness than a mere Separation of a corporation and its officers. While acknowledging the split among the circuit courts concerning

how much distinctness was sufficient, the Supreme Court held that it found nothing in the statute that required more separateness than the formal legal distinction between a person and a corporation. The Court ruled that § 1962(c) "requires no more than the formal legal distinction between 'person' and 'enterprise' (namely, incorporation) that is present here." King, 533 U.S. at 165, because a corporate owner or employee was a natural person, the Court found that he or she was distinct from the corporation itself, which constituted a legally different entity with different rights and responsibilities. The Court added, "a corporation owner/employee, a natural person, is distinct from the corporation itself, a legally different entity with different rights and responsibilities due to its different legal status," Id. at 163.

Applying this principle, the Supreme Court found that King, as all individual person, was legally distinct from his corporation. Thus, the Court held that the distinctness requirement was met when a corporate employee unlawfully conducted the affairs of the corporation of which he was the sole owner, regardless of whether he conducted those affairs within, or beyond, the scope of corporate authority.

In their § 1962(c) claims against the Defendants Frederick Shapiro and Bruce Shapiro, Plaintiffs allege that Defendant Boro constituted an 'enterprise" through which

"persons," Boro, Frederick Shapiro, and Bruce Shapiro, acted. [7] Because Defendants Frederick Shapiro and Bruce Shapiro are alleged to be employees and corporate officers of Boro, the alleged enterprise, Plaintiff may bring § 1962(c) claims against them. The Court, therefore, finds that Plaintiffs' have adequately pled "enterprise" under § 1962(c), as to Defendants Frederick J. Shapiro and Bruce H. Shapiro.

2. Section 1962(a)

Although § 1962(c) requires a distinction between a. person and an enterprise,' there is no distinctiveness requirement under § 1962(a). Leonard A. Feinberg, Inc. v. Central Asia Capital Com., 974 F. Supp. 822, 850 (E.D. Pa. 1997) (citations omitted). "[A)n entity can be both an enterprise and a defendant for purposes of § 1962(a): Kehr Packages v. Fidelcor, Inc.. 926 F.2d 1406. 1411 (3d Cir. 1991), cert denied, 501 U.S. 1222, 111 S. Ct. 2839, 115 L. Ed. 2d 1007 (1991).

Therefore, Boro can be both a defendant and the

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[7] Plaintiffs have not carefully pleaded the allegations as to Boro. Plaintiff do not indicate Boro as a defendant in their introductory headings as to Counts X-XV; which allege violations of § 1962(c). As noted above, Plaintiffs assert BORO is the enterprise as to § 1962(c). However, also indicating that Boro is a "person" under § 1962(c) is somewhat contradictory. Further by the wholesale incorporation of the § 1962(a) Counts (where Boro *is* a defendant) into the § 1962(c) Counts, Plaintiffs have, by their literal allegations, named Boro as a defendant under §

enterprise under § 1962(a), and the Court finds that Plaintiffs that Plaintiffs have adequately "enterprise" under § 1962(a) against all Defendants.

Thus, Plaintiff has adequately pleaded an "enterprise," but as the following discussion shows, Plaintiff has not satisfied the other pleading requirements of RICO.

B. Pattern of Racketeering Activity

Bonavitacola I summarized the legal requirements of pleading a pattern of racketeering activity, and required Plaintiffs to allege:

> b. As to the racketeering activity alleged under each RICO Count,
>
> include the following:
>
> i. List each predicate act which the Plaintiffs allege constitutes the RICO violation, including such specifics as names, dates and types of communications or acts.
>
> ii. Describe how each predicate act is fraudulent and/or part of a pattern of racketeering activity,
>
> iii. State how the alleged predicate acts relate to each other as part of a common plan.

Bonavitacola I, 2002 WL 31388806. at *5.

1. Predicate Acts

1962(c). If Plaintiffs' Amended Complaint was otherwise sufficient, the Court would overlook these pleading defects.

Plaintiffs allege that Defendants committed various unspecified predicate acts of mail fraud and wire fraud. (A.m. Compl. ¶ 41, 48, 55,) The mail fraud statute, 18 U.S.C. § 1341, applies only where the defendant uses the U.S. mails as "part of the execution: of the fraudulent scheme. Schmuck v. United States, 489 U.S. 705, 710, 109 S. *Ct.* 1443, 1031. Ed. 2d 734 (1989). The wire fraud statute, 18 U.S.C. § 1343, "is identical to the mail fraud statute except it speaks of communications transmitted by wire," i.e. telephone, radio, or television, and does not apply to intrastate communications. United States v. Frev, 42 F.3d 795, 797 (3d Cir. 1994). The Court of Appeals has noted that "cases construing the mail fraud statute are applicable to the wire fraud statute as well." Id. at 797 *11.2* (quoting United States v. Tarnopol., 561 F-2d 466,475 (3d Cir. 1977).

The requisite elements of mail or wire fraud are: (1) a scheme to defraud; (2) use of the transmissions to further that scheme; and (3) fraudulent intent. Werther v. Rosen, No. CIV.AO2.3589, 2002 U.S. Dist. LEXIS 22262. at *7 (E.D. Pa. Oct. 30,2002) (citing U.S. 'V. Pharis. 298 F. 3d 228, 233 (3d Cir. 2.002)). "A scheme or artifice to defraud need not be fraudulent on its face, but must involve some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension." Kehr Packages, 926 F.2d at 1415 (quoting

United States v. Pearlstein, 576 F.2d 531: .535 (3d Cir. 1978)). Further, "when alleging mail and wire fraud as predicate acts in a RICO claim, plaintiff's pleadings must identify the purpose of the mailing within the defendant's fraudulent scheme and specify the fraudulent statement, the time, place, and speaker and content of the alleged misrepresentation." Werther, 2002 U.S. Dist.. LEXIS 22262, at *7_8 (citing Annulli v. Panikkar, 200 F.3d 189, 201 n.10 (3d Cir. 1999)).

In Allen Neurosurgical Assoc., Inc. v. Lehigh Valley Health Network, No. CIV.A.99-4653.2001 U.S. Dist. LEXIS 84 (E.D. Pa. Jan. 18, 2001), Judge O'Neill set forth the principles under Federal Rule of Civil Procedure 9(b), which provides that "in all averments of fraud and mistake, the circumstances constituting fraud and mistake shall be stated with particularity." FED. R. Civ. P. 9(b). When the predicate acts in a RICO complaint sound in fraud, Rule 9(b) applies. Id. at *8 (citing Rose v. Bartle, 871 F..2d 331, 357 (3d Cir. 1989»). "Rule 9(b) requires plaintiffs to plead with particularity the 'circumstances' of the alleged fraud in order to place defendants on notice of the precise misconduct with which they are charged, and to safeguard against spurious charges of immoral and fraudulent behavior." Id. (quoting Seville lndus. Mach. Corp. v. Southmost Mach. Corn., 742 F.2d 786, 791 (3d Cir. 1984), cert. denied, 469 U.S. 1211,

105 S. Ct. 1179,841. Ed. 2d 327 (1985)). This generally requires the plaintiff to plead the "who, what, when, and where details of the alleged fraud," Id. (quoting U.S. ex rel. Waris v. StaffBuilders, Inc., No. CIV.A.96-1969, 1999 U.S. Dist. LEXIS 2998, at *4 (B.D. Pa. Mar. 4, 1999). While a complaint need. not set out "precise words.;' it should adequately describe the nature and subject of an alleged misrepresentation. Id. (citing Seville, 742 F.2d at 791).

Nonetheless, courts should not focus too narrowly" on the particularity language of Rule 9(b) and should take into account the "general simplicity and flexibility contemplated by the rules." Id. In applying the principles of Rule 9(b) in Allen Neurosurgical Assoc., Inc., Judge O'Neill stated, in relevant part:

> [M]ost of the potential predicate acts listed in the RICO Case Statement are not pled with the particularity required by Rule 9(b). Plaintiff does not plead the "date, place or time" of the alleged misrepresentations, which, though not an absolute requirement under Rule 9('0), would "inject precision and some measure of substantiation" into the allegations. See Seville, 742 F.2d at 791. Nor does plaintiff plead "who made the representations" at issue. See Satporito v. Combustion Engg'g, 843 F .2d 66, 675 (3d Cir. 1988) cert. granted and judgment

> vacated on other grounds, 489 U.S. 1049 (1989) ... Similarly, plaintiff does not plead "who received the allegedly fraudulent information." Id.; Smith v. Berg, 1999 U.S. Dist. LEXIS 18298, No. 99-2133, 1999 WL 1081065, at *4 (E.D. Pa. Dec. 1, 1999) . . . Finally, plaintiff pleads nothing of the content of each alleged misrepresentation. Saporito, 843 F.2d at 675 (allegations should include "the general content of the representations"); Rolo V. City Investin Co. Liquidating Trust 155 F.3d 644, 658 (3d Cir. 1998) (allegations of mail fraud should contain the "precise content of each particular mailing"); Smith, 1999 U.S. Dist. LEXIS 18298, 1999 WL 1081065, at *5 (same).

In short, plaintiff is not pleading "acts" of mail and wire fraud. . . . Where the Rule 9(b) standard applies, plaintiff is not entitled to the inference that the essential elements of mail and wire fraud occurred; plaintiff must plead those essential elements with particularity. Allen Neurosurgical Assoc., Inc., 2001 U.S. Dist. LEXIS 284, at *9-12.

In the present case, because Plaintiffs allege that Defendants "knowingly and repeatedly used the United States Mail and/or interstate wire transmissions in violation of 18 U.S.C.A. §1341 and § 1343" to "effect the fraudulent

scheme" (Am. Compl. ¶ 41, 48, 55), Rule 9(b) applies to the Amended Complaint. The Amended Complaint does not contain any details of predicate acts, as required under Rule 9(b) and also required by Bonavitacola I, as stated above.

There are no specific allegations of (1) the purpose of the mailing within the defendants fraudulent scheme, (2) the content of the fraudulent statement, (3) how the statement or any other communications was false or misleading, (3) the time, place, and speaker and content of the alleged misrepresentation, (4) how the fraudulent statement contributed to the alleged fraudulent scheme, (5) 'who made the fraudulent statement at issue, or (6) who received the fraudulent statement. Bonavitacola I, clearly set forth that such detail would be required in the Amended Complaint The allegations that Plaintiffs have added (the subparagraphs in ¶ 42) do not add the requisite information. These subparagraphs only allege that certain Certified Payroll Reports were false. There is no allegation that these allegedly false reports were sent by mail or wire, or by whom or to whom they were sent. The Court, therefore, finds that Plaintiffs have failed to plead mail and wire fraud as predicate acts with particularity as required.

2. Relatedness

The "relatedness" prong requires that the predicate

acts "have the same or similar purposes, results, participants. victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." H.J" Inc., 492 U.S. at 240 (quoting Organized Crime Control Act of 1970, 18 U.S.C § 3575 et seq, (partially repealed; Tabas v.Tabas, 47 F3d 1280, 1292 (3d Cir. 1995). The Third Circuit has applied a six factor test to assess the sufficiency of continuity and relatedness to form a pattern under RICO. Curtin, 1999 U.S. Dist. LEXIS 19467, at *13. These factors are: (1) number of unlawful acts; (2) length of time over. which the acts were committed; (3) similarity of the acts; (4) number of victims; (5) number of perpetrators; and (6) character of the unlawful activity. rd. at '"13-14 (citation omitted) .

In holding that the plaintiff failed to establish relatedness and, thus did not sufficiently plead a pattern of racketeering activity in Gintowt v. TL Ventures, 226 F. Supp. 2d 672 (E.D. Pa. 2002), (although allowing leave to amend) this Court stated:

> Nor does the pleading, as written, satisfactorily tie each Defendant's alleged individual or joint conduct to "ftaudi.11ent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension." Kehr Packages, 926 F 2d at 1415. This Court is mindful that, in this RICO

> case, as in an antitrust case, the character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole." Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 699, 82 S. Ct. 1404, 8 L. Ed. 2d. 777 (1962). Yet, even viewing together the many "dots" of fraud alleged, Plaintiffs Complaint... fails to connect those dots in the language and particulars of RICO.

Gintowt, 226 F, Supp. 2d at 678.

The Court's conclusion that Plaintiffs failed to sufficiently plead any details of the alleged mail and wire fraud as predicate acts in the Amended Complaint almost inevitably leads to a conclusion mat the relatedness requirement is similarly missing. Even assuming that the Amended Complaint adequately alleges two or more predicate acts, however, Plaintiffs' Amended Complaint fails to allege the requisite relatedness1 even though Bonavitacola l clearly required that the RICO case statement "state how the alleged predicate acts related to each other as part of a common plan." The Amended Complaint does not set forth any details about the purposes, results, participants, victims, or methods of commission of the alleged predicate acts, or prove that the alleged predicate acts are otherwise

interrelated. Plaintiffs give no reason for ignoring the Court's clear instructions in Bonavitacola I.

In Plaintiffs' brief in opposition to 'the Motion to Dismiss, the Plaintiffs assert that ¶¶ 31, 41 and 42 of the Amended Complaint adequately allege the required elements of relatedness (and also continuity, as discussed below. (Mem. Opp'n Mot Dismiss at 10.) It is relevant to note that Plaintiffs do not cite any cases whatsoever in support of the sufficiency of their RICO allegations. Nor does Plaintiffs' brief at any time refer to the RICO case statement required in Bonavitacola I Rather, Plaintiffs' brief only argues that ¶¶ 31, 41 and 42 of the Amended Complaint "demonstrates [sic] that the alleged predicate acts of racketeering were 'related' in that the actions described had the same purpose of procuring electrical construction contracts and subverting the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act," and that these paragraphs demonstrate that the relationship requirement is met because "the actions described have a similar method of commission" and "were; not isolated acts but part of a scheme to defraud," (Mem. Opp'n Mot. Dismiss at 9-10.) These arguments in Plaintiffs' brief are merely repetitive of the concusory allegations, but the allegations themselves do not have the requisite details. In fact, the Amended Complaint does not have any discussion whatsoever of what Defendants' "method of

commission" was nor does it describe in any detail what was Defendants' "scheme to defraud."

Plaintiffs conclude, on page 10 of their brief, "the totality of the allegations set forth in the Complaint suggest that the defendants routinely do business through the use of the predicate acts or that there is real threat that the defendants will do so in the future." This statement does not accurately summarize any of the allegations ill the Amended Complaint, which should have compiled with the RICO case statement. If Plaintiffs had the ability, and had taken the trouble, to comply, they would have met the pleading requisites for a RICO case. As noted above, Plaintiffs do not at any time cite to the Court's RICO case statement, object to it, argue that it is improper or purport to have complied. Although it was designed to be helpful to Plaintiffs, it has simply been ignored. There is no basis in the Amended Complaint to conclude that Defendants routinely do business in the manner in which Plaintiffs allege, there are no details as to how or why the Certified Payroll Reports are false, there are no details that this was a broad scheme to defraud but merely, because it is existed in several years between 1993 and 2001, that it will continue into the future.

The Court therefore, finds that Plaintiffs' Amended Complaint fails to adequately allege relatedness as to all Defendants.

3. Continuity

The "continuity" prong refers either to IID "open-ended scheme," consisting of past conduct that by its nature projects into the future with a threat of repetition, or to a "closed ended scheme consisting of a closed period of repeated conduct. Curtin,1999 U.S. Dist. LEX1S 19467, at *15-16 (quoting H.J. Inc., 492 U.S. at 241). Plaintiffs do not discuss this concept in their Amended Complaint or brief. A short-term fraudulent scheme posing no treat of future criminal conduct cannot satisfy the continuity requirement. Kehr Packages. 926 F.2d at 1412. A plaintiff must prove a regular way of doing business in an "open-ended scheme' or a series of related acts lasting a "substantial period of time" in a. "closed-ended scheme." Id. at * 16 (citations omitted). With respect to a "closed-ended scheme," the Third Circuit has developed a durational requirement of at least twelve months, which time period is measured between the first and last predicate acts alleged. Plater-Zyberk v. Abraham, No. CIV.A.97-3322, 1998 U.S. Dist. LEXIS 1736, at *23-24 (B.D, Pa. Feb. 18, 1998) (citing Tabas, 47 F.3d at 1293).

Plaintiffs' Amended Complaint fails to allege the requisite continuity. The Amended Complaint fails to adequately plead "open-ended" continuity because it does not expressly allege, or provide a basis from which the court could reasonably infer, that Defendants' alleged misconduct

poses a threat of future criminal activity. See Lubart v, Riley & Fanelli P.C., No. CIV.A.97-6392, 1998 U.S. Dist. LEXIS 0109, at *33. (E.D, Pa. June 22, 1998) (finding that the proposed complaint failed to adequately plead open-ended continuity where the fraudulent conduct did not extend beyond the life of the matter before the court and where there were no allegations suggesting a future threat). Although the original Complaint was filed on October 31, 2001, the Amended Complaint was not filed until November 11, 2002. Plaintiffs omit any allegations of events in the intervening twelve months.

The Amended Complaint also fails to adequately plead "closed ended" continuity. Although the time period between the first allegedly false Certified Payroll Report (February 26, 1993) and the last Report (June 29, 2001) alleged is over eight years, there are no allegations of false reports for the years 1994, 1995, 1998 - which omission in and of itself dispels any notion of continuity. Plaintiffs have failed to establish that the predicate acts are related,[8] which is required for "closed-ended" continuity. H.J. Inc., 492 U.S. at 242. The Court, therefore, finds that Plaintiffs' Amended Complaint fails to adequately allege continuity with respect to all Defendants.

In sum, Plaintiffs have failed to allege what many

courts have required for a RICO complaint - a scheme to defraud, with a pattern of related, continuing criminal activity. There is no allegation of any collection of the allegedly false reports submitted to the Ridley School District, the Neshaminy School District, and the Department of Navy. There is no allegation as to what other business the Defendants engaged in and whether they used false payroll reports in order to get that other business. If. for example. over these eight years, Defendants' had 100 different contracts, the fact that they may have committed fraud as to three of them (Ridley School District, Neshaminy School District and the Department of Navy) would be plainly insufficient to constitute a scheme under RICO. If these contracts were the only contracts, or a majority of the total number of contracts, then a RICO scheme may Exist. There is no way to tell from the Amended Complaint.

C. Injury

To prevail in a civil action for damages under RICO, a plaintiff must establish a violation of § 1962, allege an injury to his or her business property "by reason of"" the alleged violation of § 1962, and plead the requisite causal connection between the injury and the violation of § 1962

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[8] See discussion supra Part IV. B. 2.

Tri-County Concerned Citizens Assn. v. Carr, No. Crv.A.98-4184, 2001 U.S. Dist. LEXIS 14933, at *17 (E.D. Pa. Sept. 18, 2001). The Supreme Court has determined that the phrase "by reason of' in § 1964(c) requires a plaintiff to show the alleged RICO violations proximately caused the plaintiff's injury, meaning that the violation cannot be too remote from the injury.[9] Id. (citing Holmes v. Securities Investor Protection Corp., 503 U.S. 258, 268, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992)).

> There are three factors to consider in a proximate cause analysis in a RICO claim:
> (1) the directness of the injury - "the more indirect the injury, 'the more difficult it becomes to ascertain the amount of a plaintiffs damages attributable to (defendant's ...,wrongdoing], as distinct from other, independent factors; '" (2) the difficulty of apportioning damages among potential plaintiffs - "allowing recovery by indirectly injured parties would require complicated rues for apportioning damages;" and (3) the possibility of other plaintiffs

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[9] The proximate cause requirement the Supreme Court imposes of civil RICO claims is an aspect of standing rather than an element of a plaintiff's civil RICO prima facie case. *Carr,* 200t U.S. Dist. LEXIS 14933, at 18 n. 4 (citations omitted).

> vindicating the goals of RICO - "direct victims could generally be counted on to vindicate the policies underlying" RICO in a better manner than indirect victims.

Id. at *18-19 (quoting Allegeny Gen. Hosp. v. Philip Morris, Inc., 228 F.3d 429, 443 (3d Cir. 2000) (internal citations omitted)).

A threshold question is whether Plaintiffs have alleged facts, which, if taken as true, sufficiently establish proximate causation. Id. At * 19. The following are Plaintiffs allegations of injury and proximate cause as set forth in the Amended Complaint:

a. Plaintiff Bonavitacola's Alleged Injury by All Defendants

In Counts I-III, Plaintiff Bonavitacola alleges that Defendants "received income derived from the pattern of racketeering activity. . . and used or invested such income in the establishment or operation of [Defendant Boro]." (Am. Comp. ¶¶ 43, 50, 57.) Plaintiff Bonavitacola further alleges that "[but for [Defendants'] investment of the income derived from the pattern of racketeering. . . into the establishment Of operation of [Defendant Boro], Plaintiff Bonavitacola would have been able to compete with [Defendant Boro] on a fair and honest basis and [would have been] awarded the

Contract for public work by the Ridley School District to provide electrical construction in connection with the. . . Ridley High School project" Id. , ¶¶ 44, 51,58. Finally, Plaintiff Bonavitacola alleges that "[a]s a proximate result of [Defendant's'] violation of 18 U.S.CA. § 1962(a), [Plaintiff Bonavitacola] has suffered damages in the way of a loss of income and revenue," Id. ¶¶ 45, 52, 59.

b. Plaintiff Local Union 6541:5 and Plaintiff Local Union 98's Alleged Injury by Ail Defendants

In Counts IV-IX; Plaintiffs Local Union 654 and Local Union 98 allege that "[but for [Defendants] investment income derived from the pattern of racketeering....into, the establishment or operation of [Defendant Boro]. [Plaintiffs Local Union 654 and Local Union 98] could have received contributions to multi-employer benefit plans for employees in connection with the . . . public work project awarded by the Ridley School District." Id. ¶¶ 61, 64, 67, 70, 73, 76. Plaintiffs Local Union 654 and Local Union 98 further allege that "[as a proximate result of [Defendants'] violation of 18 U.S.GA. § 1962(a) [Plaintiffs Local Union 6:54 and Local Union 98 have] suffered damages in way of a loss of income and revenue." Id. ¶¶ 62, 65, 68, 71, 74, 77.

c. Plaintiff Bonavitacola's Alleged Injury by Defendants Frederick Shapiro and Bruce Shapiro

In Counts X and XI, Plaintiff Bonavitacola alleges that "[but for [Defendant Frederick Shapiro's and Defendant Bruce Shapiro's] falsifications and conduct alleged herein (plaintiff Bonavitacola] would have been able to compete with [Defendant Boro] on a fair and honest basis and [would have been] awarded the contract for public work by *the* Ridley School District to provide electrical construction on the. . . Ridley High School project." Id. ¶¶ 80, 84. Plaintiff Bonavitacola further alleges that "[a]s a proximate result of [Defendants Frederick Shapiro's and Defendant Bruce Shapiro's] violation of 18 U.S.C.A. § 1962(c), [Plaintiff Bonavitacola] has suffered damages in the way of loss of income and. revenue," Id. ¶¶ 81,85.

d. Plaintiff Local Union 654's and Plaintiff Local Union 98's Alleged Injury by Defendants Frederick Shapiro and Bruce Shapiro

In Counts XII-XV, Plaintiffs Local Union 654 and Local Union 98 allege that '[b]ut for [Defendant Frederick Shapiro's and Defendant Bruce Shapiro's] falsifications and conduct alleged therein [Plaintiffs Local Union 654 and Local Union 98] would have received contributions to multi-

employer benefit plans for employees in connection with the...public work project awarded by the Ridley School District." Id ¶¶ 87, 90, 93, 96. Plaintiffs Local Union 654 and Local Union 98 further allege that "[a]s a proximate result of [Defendants Frederick Shapiro's and Defendant Bruce Shapiro's] violation of 18 U.S.C.A § 1962(c), [Plaintiffs Local Union 654 and Local Union 98 have] suffered damages in way of a loss of income and revenue." Id. ¶¶ 88, 91, 94, 97.

Plaintiffs' chain of logic is that Defendants submitted false payroll records which did not comply with Pennsylvania's Prevailing Wage Act and federal law, thus allowing Defendant Boro to submit lower bids which resulted in Defendant Boro, instead of Plaintiff Bonavitacola, being awarded the three public contracts.

There are several gaps in Plaintiffs' logic as represented by the allegations which, once again; could have been cured by Plaintiffs' complying with the RICO case statement described in Bonavitacola I. First, although Plaintiff Bonavitacola alleges that it was the second lowest bidder as to the Ridley School District (¶33); it does not make a similar allegation as to the Neshaminy School District and the Department of the Navy. Even as to Ridley School District, it does not necessarily follow that Plaintiff Bonavitacola would have been awarded the contract if

Defendant Boro had not bid, or had not been the low bidder, just because it was the next lower bidder. See Northland Equities, Inc. v. Gateway Center Corp., 411 F.Supp. 259, 264 (E.D. Pa. 1977) (holding that it was not certain that the award would have been made to the plaintiff, an unsuccessful bidder, even as low bidder, because other factors can go into the award of a contract in addition to the requirement that the contract be awarded to the low bidder).

However, assuming arguendo that Plaintiff Bonavitacola has satisfied the requirements of pleading proximate cause under RICO, there still remains substantial questions as to whether the other Plaintiffs, the two labor unions, have sufficiently alleged direct injury. As noted above, the Plaintiff labor unions assert that they would have received additional contributions to their multi-employer benefit plans for employees if Plaintiff Bonavitacola had been awarded the contracts. The Court finds that this is an indirect injury because the Complaint does not state the requisite allegations to show how the contract revenues following to Plaintiff Bonavitacola, assuming it had been awarded any contract, would have resulted in benefit to the Plaintiff labor unions. In addition, Plaintiff labor unions do not allege that they themselves have standing to sue for these types of damages, which presumably are for the benefit of the Union members. The

Amended Complaint is completely silent on this issue.

Accordingly, the Court finds that Plaintiffs have failed to sufficiently plead proximate cause injury and, therefore, lack standing to bring this civil RICO action.

D. Davis-Bacon Act

In its initial Motion to Dismiss, one of Defendants' grounds in moving to dismiss was that there is no private right of action under the Davis-Bacon Act, 40 U.S.C. § 3142 et seq., or the Pennsylvania Prevailing Wage Act, 43 PA. STAT. ANN. § 165-1 et seq.

The Court reserved judgment on this issue until it had the opportunity to determine whether the requisites of RICO were satisfied in Plaintiffs' Amended Complaint.

The Davis-Bacon Act is designed to protect laborers and mechanics employed on government projects from being paid at less that the locally prevailing wage rate. Universities Research Assoc., Inc. v. Coutu, 450 U.S. 754, 771,101 S. Ct. 1451, 67 L. Ed. 2d 662 (1981). The Davis-Bacon Act sets forth a detailed administrative scheme to enforce violations of its provisions, and provides that if the contractor fails to pay the prevailing wages specified in the contract, the government contracting officer may withhold so much of the accrued payments as may be considered necessary to pay the laborers and mechanics the difference between the contract

wages and those actually paid. 40 U.S.C. § 3144(a)(1). In the event that these funds are insufficient to reimburse the employees, the laborers, and mechanics may have the "right to bring a civil action and intervene against the contractor and the contractor's sureties." 40 US.C. § 3 1 44{a) (2).

Courts have held that plaintiffs cannot base their RICO claims on alleged violations of the Davis-Bacon Act. Livingston v. Shore Slurry Seal Inc.. 98 F. Supp. 2d 594,600 (D.N.J. 2000). Because the Davis-Bacon Act is the exclusive remedy for the alleged underpayment of wages for work performed on federal construction projects, there is no private right of action pursuant to the Davis-Bacon Act. ld. at 600-01; see also Miccoli v. Rav Communications, Inc., CIV,A.99-3825, 2000 U.S. Dist. LEXIS 10048, at *6 (E.D. Pa. July 21, 2000.) (stating that no private right of action exists under the Davis-Bacon Act) (citing Weber v. Heat Control CQ., 728 f.2d 599 (3d Cir, 1984)).

Plaintiffs do not dispute the abstract correctness of the proposition that there is no private right of action under the Davis-Bacon Act, which is well settled in the law. Plaintiffs asserted that the cases relied upon by the Defendants involved instances where the plaintiffs were employees of contractors/subcontractors, alleging that they had been paid at a wage rate below the contract rate for work performed, but that Plaintiffs' allegations in this case are

different. Plaintiffs themselves do not allege that they have not been paid a prevailing wage, but rather, that they have lost business because the Defendants have made fraudulent misrepresentations as to the Defendants salary and wage payments, and have used these fraudulent statements to gain business at the expense of Plaintiffs.

The Davis-Bacon Act only provides a cause of action for laborers and mechanics employed on government projects. Plaintiffs have not set forth, and the Court has not found, any caselaw supporting a cause of action for parties who are not laborers and mechanics employed on government projects, but, who have alleged damages as a result of violations of the Davis-Bacon Act. Moreover, the Court finds that the cases holding that there is no private right of action under the Davis-Bacon Act are applicable in the present case. Thus, the Court finds that Plaintiffs cannot base their RICO claims on alleged violations of the Davis-Bacon Act.

V. Pendent Jurisdiction

Because the Court will dismiss the RICO claims, there will be no federal anchor claim upon which original subject matter jurisdiction may be based. Pursuant to 28 U.S.C. § 1367(c)(3) the Court will dismiss the pendent state law claims in Counts XVI-XVIII without prejudice. See

Markowitz v. Northeast Land Co,) 906 F.2d 100, 106 (3d Cir. 1990) (the rule within this Circuit is that once all claims with an independent basis of federal jurisdiction have been dismissed the case no longer belongs in federal court') (citing Lovell Mfg. Corp v. Export-Import Bank of the United States, 843 F.2d 725, 734 (3d Cir. 1988)). Plaintiffs may refile their state law claims in state court.

An appropriate Order follows.

UNITED STATES DISTRICT COURT,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BONIVITACOLA ELECTRIC CONTRACTOR, INC. et al.,	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	
BORO DEVELOPERS, INC. et al.	:	NO. 01_5508
Defendants.	:	

ORDER

AND NOW, this 12th day of February, 2003, upon consideration of Defendants, Motion to Dismiss Amended Complaint (Docket No. 12) and Plaintiffs' Response thereto (Docket No.15), it is hereby ORDERED that Defendants' Motion to Dismiss Amended Complaint is GRANTED with prejudice as to Counts I-XV, and that Counts XVI-XV, based on state law claims, are dismissed without prejudice.

BY THE COURT:

"/s/ MICHAEL M. BAYLSON, U.S.D.J."

18 U.S.C.A. § 1962

United States Code Annotated

Title 18. Crimes and Criminal Procedure

§ 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of he outstanding securities of any one class, and do

not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

CREDIT(S)

(Added Pub.L. 91-452, Title IX, § 901(a), Oct. 15, 1970, 84 Stat. 942, and amended Pub.L. 100-690, Title VII, § 7033, Nov. 18, 1988, 102 Stat. 4398.)

40 U.S.C.A. § 3141

Formerly cited as 40 USCA § 276a

United States Code Annotated

Title 40. Public Buildings, Property, and Works

Subtitle II. Public Buildings and Works

§ 3141. Definitions

In this subchapter, the following definitions apply:

(1) Federal Government.--The term "Federal Government" has the same meaning that the term "United States" had in the Act of March 3, 1931 (ch. 411, 46 Stat. 1494 (known as the Davis-Bacon Act).

(2) Wages, scale of wages, wage rates, minimum wages, and prevailing wages.-- The terms "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" include--

(A) the basic hourly rate of pay; and

(B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other

bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits, the amount of-

(i) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person under a fund, plan, or program; and

(ii) the rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected.

CREDIT(S)

(Pub.L. 107-217, § 1, Aug. 21, 2002, 116 Stat. 1150.)

40 U.S.C.A. § 3144

Formerly cited as 40 USCA § 276a-2

United States Code Annotated

Title 40. Public Buildings, Property, and Works

Subtitle II. Public Buildings and Works

Part A. General

§ 3144. Authority of Comptroller General to pay wages and list contractors violating contracts

(a) Payment of wages.--

(1) In general.--The Comptroller General shall pay directly to laborers and mechanics from any accrued payments withheld under the terms of a contract any wages found to be due laborers and mechanics under this subchapter.

(2) Right of action.--If the accrued payments withheld under the terms of the contract are insufficient to reimburse all the laborers and mechanics who have not been paid the wages required under this subchapter, the laborers and mechanics have the same right to bring a civil action and intervene against the contractor and the contractor's sureties as is conferred by law on persons furnishing labor or materials. In those proceedings it is not a defense that

the laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

(b) List of contractors violating contracts.--

(1) In general.--The Comptroller General shall distribute to all departments of the Federal Government a list of the names of persons whom the Comptroller General has found to have disregarded their obligations to employees and subcontractors.

(2) Restriction on awarding contracts.--No contract shall be awarded to persons appearing on the list or to any firm, corporation, partnership, or association in which the persons have an interest until three years have elapsed from the date of publication of the list.

CREDIT(S)

(Pub.L. 107-217, § 1, Aug. 21, 2002, 116 Stat. 1152.)

40 U.S.C.A. § 3146

Formerly cited as 40 USCA § 276a-3

United States Code Annotated

Title 40. Public Buildings, Property, and Works

Subtitle II. Public Buildings and Works

Part A. General

§ 3146. Effect on other federal laws

This subchapter does not supersede or impair any authority otherwise granted by federal law to provide for the establishment of specific wage rates.

CREDIT(S)

(Pub.L. 107-217, § 1, Aug. 21, 2002, 116 Stat. 1152.)

40 U.S.C.A. § 3147

Formerly cited as 40 USCA § 276a-5

United States Code Annotated

Title 40. Public Buildings, Property, and Works

Subtitle II. Public Buildings and Works

Part A. General

§ 3147. Suspension of this subchapter during a national emergency

The President may suspend the provisions of this subchapter during a national emergency.

CREDIT(S)

(Pub.L. 107-217, § 1, Aug. 21, 2002, 116 Stat. 1153.)

40 U.S.C.A. § 3148

Formerly cited as 40 USCA § 276a-7

United States Code Annotated

Title 40. Public Buildings, Property, and Works

Subtitle II. Public Buildings and Works

§ 3148. Application of this subchapter to certain contracts

This subchapter applies to a contract authorized by law that is made without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), or on a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, if this subchapter otherwise would apply to the contract.

(Pub.L. 107-217, § 1, Aug. 21, 2002, 116 Stat. 1153.)

43 P.S. § 165-1

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated

Purdon's Pennsylvania Statutes Annotated

Title 43. Labor

§ 165-1. Short title

This act shall be known and may be cited as the "Pennsylvania Prevailing Wage Act".

CREDIT(S)

1961, Aug. 15, P.L. 987, § 1.

43 P.S. § 165-6

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated

Purdon's Pennsylvania Statutes Annotated

Title 43. Labor

§ 165-6. Duty of contractor

Every contractor and subcontractor shall keep an accurate record showing the name, craft and the actual hourly rate of wage paid to each workman employed by him in connection with public work, and such record shall be preserved for two years from date of payment. The record shall be open at all reasonable hours to the inspection of the public body awarding the contract and to the secretary.

CREDIT(S)

1961, Aug. 15, P.L. 987, § 6.

43 P.S. § 165-13

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated

Purdon's Pennsylvania Statutes Annotated

Title 43. Labor

§ 165-13. Workmen's rights

Any workmen paid less than the rates specified in the contract shall have a right of action for the difference between the wage so paid and the wages stipulated in the contract, which right of action shall be instituted within six months from the occurrence of the event creating such right.

CREDIT(S)

1961, Aug. 15, P.L. 987, § 13.

Federal Rules of Civil Procedure Rule 12

United States Code Annotated

Federal Rules of Civil Procedure for the United States District Courts

Rule 12. Defenses and Objections--When and How Presented--By Pleading or Motion--Motion for Judgment on Pleadings

(a) When Presented.

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint, or

(B) if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order, unless the order

otherwise directs.

(3)(A) The United States, an agency of the United States, or an officer or employee of the United States sued in an official capacity, shall serve an answer to the complaint or cross-claim-- or a reply to a counterclaim--within 60 days after the United States attorney is served with the pleading asserting the claim.

(B) An officer or employee of the United States sued in an individual capacity for acts or omissions occurring in connection with the performance of duties on behalf of the United States shall serve an answer to the complaint or cross- claim--or a reply to a counterclaim--within 60 days after service on the officer or employee, or service on the United States attorney, whichever is later.

(4) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may

strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits there from any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor

included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

CREDIT(S)

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 17, 2000, eff. Dec. 1, 2000.)

43 P.S. § 260.1

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated

Purdon's Pennsylvania Statutes Annotated

Title 43. Labor

§ 260.1. Short title

This act shall be known and may be cited as the "Wage Payment and Collection Law."

CREDIT(S)

1961, July 14, P.L. 637, § 1, effective in 30 days.

43 P.S. § 260.9a

Purdon's Pennsylvania Statutes and Consolidated Statutes Annotated

Purdon's Pennsylvania Statutes Annotated

Title 43. Labor

§ 260.9a. Civil remedies and penalties

(a) Any employee or group of employees, labor organization or party to whom any type of wages is payable may institute actions provided under this act.

(b) Actions by an employee, labor organization, or party to whom any type of wages is payable to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction, by such labor organization, party to whom any type of wages is payable or any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action or on behalf of all employees similarly situated. Any such employee, labor organization, party, or his representative shall have the power to settle or adjust his claim for unpaid wages.

(c) The employee or group of employees, labor organization or party to whom any type of wages is payable may, in the alternative, inform the secretary of the wage claim against an employer or former employer, and the secretary shall, unless the claim appears to be frivolous, immediately notify the employer or former employer of such claim by certified mail. If the employer or former employer fails to pay the claim or make satisfactory explanation to the secretary of his failure to do so within ten days after receipt of such certified notification, thereafter, the employer or former employer shall be liable for a penalty of ten percent (10%) of that portion of the claim found to be justly due. A good faith dispute or contest as to the amount of wages due or the good faith assertion of a right of set-off or counter-claim shall be deemed a satisfactory explanation for nonpayment of such amount in dispute or claimed as a set-off or counter-claim. The secretary shall have a cause of action against the employer or former employer for recovery of such penalty and the same may be included in any subsequent action by the secretary on said wage claim or may be exercised separately after adjustment of such wage claim without court action.

(d) In any civil action brought under the provisions of this act, the Secretary of Labor and Industry may require the employer to post bond or security to secure payment of the

entire claim of the employee with credit in the amount of any good faith assertion of a right of set-off or counter-claim. Such bond or security shall be posted in the court where the civil action is brought. The request for bond or security shall be signed by the secretary and shall provide that such bond or security in the amount stated shall be posted within 30 days of service thereof on the employer. If such bond or security is not posted within the 30-day period, the employer will be deemed to have admitted his liability and execution may immediately ensue.

(e) If the secretary determines that wages due have not been paid and that such unpaid wages constitute an enforceable claim, the secretary shall, upon the request of the employee, labor organization or party to whom any type of wages is payable, take an assignment in trust, from the requesting party of such claim for wages without being bound by any of the technical rules respecting the validity of any such assignments and may bring any legal action necessary to collect such claim, subject to the right by the employer to set-off or counter-claim against the assigning party. Upon any such assignment, the secretary shall have the power to settle and adjust any such claim to the same extent as might the assigning party.

(f) The court in any action brought under this section shall, in addition to any judgment awarded to the plaintiff or

plaintiffs, allow costs for reasonable attorneys' fees of any nature to be paid by the defendant.

(g) No administrative proceedings or legal action shall be instituted under the provisions of this act for the collection of unpaid wages or liquidated damages more than three years after the day on which such wages were due and payable as provided in sections 3 and 5.

CREDIT(S)

1961, July 14, P.L. 637, § 9.1, added 1977, July 14, P.L. 82, No. 30, § 6, imd. effective. As affected 1980, Oct. 5, P.L. 693, No. 142, § 302, effective in 60 days.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN
DISTRICT OF PENNSYLVANIA

BONAVITACOLA ELECTRIC CONTRACTOR, INC. 1467 County Line Road Huntingdon Valley, PA 19006	: NO. : 01 CV 5508
and	
LOCAL UNION NO. 654 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS 600 Turner Industrial Way Ashton, PA 19014	
and	
LOCAL UNION NO. 98 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS 1701 Spring Garden Street Philadelphia, PA 19130	
and	
CURTIS BELL 26 Elm Street Trenton, NJ 08611	
Plaintiffs	
v	

BORO DEVELOPERS, INC.
400 Feheley Drive
King of Prussia, PA

and

FREDERICK J. SHAPIRO
400 Feheley Drive
King of Prussia, PA

and

BRUCE H. SHAPIRO
400 Feheley Drive
King of Prussia, PA

Defendants

CIVIL ACTION - COMPLAINT

The plaintiffs by and through their attorneys, Marino & Associates, PC demand a trial jury and in support thereof allege the following:

JURISDICTION AND VENUE

1. This action is brought pursuant to 18 U.S.C.A. §1964(c) [relating to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. §§1961-1968] and pendent state claims.

2. This Court maintains original jurisdiction over the instant claims pursuant to 28 U.S.C.A. § 1331 as a result of the claims arising under the laws of United States.

3. This Court maintains supplemental jurisdiction over claims arising under state law pursuant to 28 U.S.C.A. § 1367(a), Rule 18(a) of the Federal Rule of Civil Procedure and the principles of pendent jurisdiction as a result of the claims arising under state law being so related to the claims in the action within which original jurisdiction is found that they form a part of the same case or controversy.

4. Many of the acts alleged herein occurred within this District. Defendants have, directly, or indirectly, made use of the means of interstate commerce and of the United States Postal service in connection with the acts, practices and transactions as alleged herein.

PARTIES AND OTHER ENTITIES

5. Plaintiff Bonavitacola Electric Contractor, Inc. (hereinafter referred to as Bonavitacola Electric) is a corporation for profit incorporated in the State of Pennsylvania with its principal place of business 1467 County Line Road, Huntingdon Valley, PA and registered office for process of service located P.O. Box 39 Southampton, PA 18966. At all relevant times material hereto, plaintiff Bonavitacola Electric was engaged in the business of providing electrical services to local, state and federal government, city authorities, school districts, and

commercial and industrial accounts in Pennsylvania and New Jersey. At all relevant times material hereto plaintiff Bonavitacola Electric acted by and through its duly authorized employees, agents, workers and/or representatives acting within the scope of their employment.

6. Plaintiff Local Union No. 654, International Brotherhood of Electrical Workers (hereinafter referred to as "Local Union 654") is an unincorporated association commonly known as a labor union having its principal place of business located 600 Turner Industrial Way, Ashton, PA 19014. At all relevant times material hereto plaintiff Local Union 654 was engaged in the service of providing a labor source of electrical workers to electrical contractors who provided electrical services to the public, local, state and federal government, city authorities, school districts, and commercial and industrial accounts in Pennsylvania and New Jersey.

7. Plaintiff Local Union No. 98, International Brotherhood of Electrical Workers (hereinafter referred to as "Local Union 98") is an unincorporated association commonly known as a labor union having its principal place of business located 1701 Spring Garden Street, Philadelphia, PA 19130. At all relevant times material hereto Local Union 98 was engaged in the service of providing a labor source of electrical workers to electrical contractors who provided

electrical services to the public, local, state and federal government, city authorities, school districts, and commercial and industrial accounts in Pennsylvania and New Jersey.

8. Plaintiff Curtis Bell is an adult individual residing 26 Elm Street, Trenton, NJ 08611. At all relevant times material hereto plaintiff Curtis Bell was an employee, agent, servant or representative of defendant Boro Developers, Inc.

9. Defendant Boro Developers, Inc. is a corporation for profit incorporated in the State of Pennsylvania with its principal place of business and registered office for process of service located 400 Feheley Drive, King of Prussia, PA. At all relevant times material hereto, defendant Boro Developers, Inc. was engaged in the business of providing electrical services to local, state and federal government, city authorities, school districts, and commercial and industrial accounts in the Pennsylvania and New Jersey.

10. Defendant Frederick J. Shapiro is an adult individual and at all relevant times material hereto was the agent, servant, and employee of defendant Boro Developers, Inc. At all relevant times material hereto defendant Frederick J. Shapiro occupied the position of Chief Executive Officer of defendant Boro Developers, Inc. At all

relevant times material hereto defendant Frederick J. Shapiro acted within the course and scope of his employment. In addition, defendant Frederick J. Shapiro, authorized, directed and participated in all of the acts which plaintiffs allege herein.

11. Defendant Bruce H. Shapiro is an adult individual and at all relevant times material hereto was the agent, servant, and employee of defendant Boro Developers, Inc. At all relevant times material hereto defendant Bruce H. Shapiro occupied the position of Chief Operating Officer of defendant Boro Developers, Inc. At all relevant times material hereto defendant Bruce H. Shapiro acted within the course and scope of his employment. In addition, defendant Bruce H. Shapiro, authorized, directed and participated in all of the acts which plaintiffs allege herein.

FACTUAL BACKGROUND

12. The plaintiffs incorporate by reference the previous paragraphs of the Complaint as if set forth fully herein.

13. At all relevant times material hereto, plaintiff Bonavitacola Electric and defendant Boro Developers, Inc. competed with each other for the receipt of various electrical construction, service and maintenance contracts awarded by local, state and federal government, city authorities, school

districts, and commercial and industrial accounts in the Pennsylvania and New Jersey territories.

14. On or about April 28, 1999, and relevant times thereafter plaintiff Local Union 654 supplied electrical workers to plaintiff Bonavitacola Electric and received an income flow from plaintiff Bonavitacola Electric in the form of contributions to multi-employer benefit plans for employees employed on public work projects as a direct result thereof.

15. On or about April 28, 1999, and relevant times thereafter plaintiff Local Union 98 supplied electrical workers to plaintiff Bonavitacola Electric and received an income flow from plaintiff Bonavitacola Electric in the form of contributions to multi-employer benefit plans for employees employed on public work projects as a direct result thereof.

16. To procure electrical service, maintenance and construction pursuant to the Pennsylvania School Code, 24 P.S. §7-751, Ridley School District, located Folsom, PA, solicits competitive bids and awards the contract to the lowest responsible bidder.

17. To procure electrical service, maintenance and construction pursuant to the Pennsylvania School Code, 24 P.S. §7-751, the Neshaminy School District, located

Langhorne, PA, solicits competitive bids and awards the contract to the lowest responsible bidder.

18. To procure electrical service, maintenance and construction the Department of the Navy, located 10 Industrial Highway, Lester, PA, solicits competitive bids and awards the contract to the lowest responsible bidder.

19. It is the policy and procedure of the Ridley School District to publish the bid specifications of a contract for public work.

20. It is the policy and procedure of the Neshaminy School to publish the bid specifications of a contract for public work.

21. It is the policy and procedure of the Department of the Navy to publish the bid specifications of a contract for public work.

22. The bid specifications of a contract for public work projects issued by the Ridley School District contains provisions requiring that the prevailing wage must be paid to the workers employed in the performance of the contract.

23. The bid specifications of a contract for public work projects issued by the Neshaminy School District contains provisions requiring that the prevailing wage must be paid to the workers employed in the performance of the contract.

24. The bid specifications of a contract for public work projects issued by the Department of the Navy contains provisions requiring that the prevailing wage must be paid to the workers employed in the performance of the contract.

25. In accordance with state, county, and federal policy the Ridley and Neshaminy School Districts and the Department of the Navy required that certain contracts for electrical service, repair, maintenance and construction be awarded to those contractors who asserted in good faith or otherwise comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 et. seq. and the Davis-Bacon Act, 40 U.S.C.A. §276 et seq.

26. On or about April 28, 1999, defendant Boro Developers, Inc. submitted a timely competitive bid to the Ridley School District to procure the award of a public contract to supply electrical construction to Ridley High School in connection with contract No. 9778-329 and was awarded the contract.

27. On or before November 1, 1996, defendant Boro Developers, Inc. submitted a timely competitive bid to the Department of the Navy to procure the award of a public contract to supply electrical construction to the D.L.A.I.C.P in connection with contract Nos. N62472-96-C-0002 and N62472-94-C-0012 and was awarded the contract.

28. On or before February 26, 1993, defendant Boro Developers, Inc. submitted a timely competitive bid to the Neshaminy School District to procure the award of a public contract to supply electrical construction to the Maple Point Middle School and was awarded the contract.

29. To procure contract from the Ridley and Neshaminy School Districts and the Department of the Navy defendant Frederick J Shapiro stated, promised, attested, or otherwise certified on behalf of defendant Boro Developers, Inc. that it would comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et. seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §276 et seq.

30. To procure the contract from the Ridley and Neshaminy School Districts and the Department of the Navy defendant Bruce H. Shapiro stated, promised, attested, or otherwise certified that on behalf of defendant Boro Developers, Inc. that it would comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 et. seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §276 et seq.

31. Defendants Frederick J Shapiro and Bruce H. Shapiro's statement, promise, attestation, or certification to the Ridley and Neshaminy School Districts and the Department of the Navy that they on behalf of defendant Boro Developers would comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et. seq. and/or the

Davis-Bacon Act, 40 U.S.C.A. §§276 et seq. were knowingly and willfully false and fraudulently made to deceive the Ridley and Neshaminy School Districts and the Department of the Navy, and plaintiff Bonavitacola Electric by making it appear that defendant Boro Developers, Inc. was a responsible and qualified contractor.

32. On or about April 28, 1999, plaintiff Bonavitacola Electric submitted a timely competitive bid to the Ridley School District to procure the award of a public contract to supply electrical construction in connection with Ridley High School, contract No. 9778-329.

33. Plaintiff Bonavitacola Electric was the second lowest bidder and not awarded the public contract by the Ridley School District to provide electrical construction in connection with Ridley High School, contract No. 9778-329.

34. On or about February 20, 2001, plaintiff Bonavitacola Electric became aware that defendants engaged in the fraudulent practice of falsifying certified payroll records and other certifications which were required to be submitted to the awarding agencies, the Ridley and Neshaminy School Districts, the Department of the Navy and others yet named.

35. On or about February 20, 2001, plaintiff Local Union 654 became aware that defendants engaged in the fraudulent practice of falsifying certified payroll records

and other certifications which were required to be submitted to the awarding agencies, the Ridley and Neshaminy School Districts, the Department of the Navy and others yet named.

36. On or about February 20, 2001, plaintiff Local Union 98 became aware that defendants engaged in the fraudulent practice of falsifying certified payroll records and other certifications which were required to be submitted to the awarding agencies, the Ridley and Neshaminy School Districts, the Department of the Navy and others yet named.

37. On or about February 20, 2001, plaintiff Curtis Bell became aware that defendants engaged in the fraudulent practice of falsifying certified payroll records and other certifications which were required to be submitted to the awarding agencies, the Ridley and Neshaminy School Districts, the Department of the Navy, and others yet named and failed to pay him an applicable wage rate for hours during which he performed electrical construction.

COUNT I

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Bonavitacola Electric v Boro Developers, Inc.)

38. The plaintiff Bonavitacola Electric incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

39. At all relevant times hereto defendant Boro Developers, Inc. constituted an "enterprise" within the meaning of 18 U.S.C.A. §1961(4). The enterprise was engaged in and the activities of that enterprise affected interstate commerce.

40. At all relevant time hereto defendant Boro Developers, Inc. constituted a "person" capable of holding a legal or beneficial interest in property within the meaning of 18 U.S.C.A. §1961(3).

41. Defendant Boro Developers, Inc. engaged in a course of conduct designed to obtain the award of electrical contracts from the Ridley and Neshaminy School Districts and the Department of the Navy by fraudulently subverting the Pennsylvania Prevailing Wage Act and/or the Davis Bacon Act. To effect the fraudulent scheme and carry out the contracted duties, defendant Boro Developers, Inc. knowingly and repeatedly used the United States Mails and/or interstate wire transmissions in violation of 18 U.S.C.A. §1341 and §1343. Defendant's repeated violations of 18 U.S.C.A. §1341 and §1343 constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. §§1961(1)(B) and (5).

42. Boro Developers, Inc. by or through its agents or representatives engaged in the fraudulent practices in furtherance of a fraudulent scheme to subvert the Pennsylvania Prevailing Wage Act and/or the Davis-Bacon Act as set forth below:

A. **Ridley School District**

(1) Caused to be submitted to authorities of the Ridley School District a competitive bid to procure the award of a public contract to supply electrical construction in connection with Ridley High School located Folsom, PA, and falsely pledged to comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

(2) Caused to falsify Certified Payroll Reports for Public Work Projects as they relate to a public contract to provide electrical construction in connection with the aforementioned Ridley High School project in the following, but not limited ways:

a. falsely reported in Certified Payroll Report #24 commencing December 25, 1999 and ending December 31, 1999 that employee classified as black male had performed labor related work duties despite that the employee had performed electrical construction;

b. falsely reported in Certified Payroll Report #25 commencing January 1, 2000 and ending January 7,

2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

c. falsely reported in Certified Payroll Report #26 commencing January 8, 2000 and ending January 14, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

d. falsely reported in Certified Payroll Report #27 commencing January 15, 2000 and ending January 21, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

e. falsely reported in Certified Payroll Report #28 commencing January 22, 2000 and ending January 28, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

f. falsely reported in Certified Payroll Report #29 commencing January 29, 2000 and ending February 4, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

g. falsely reported in Certified Payroll Report #30 commencing February 5, 2000 and ending February

11, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

h. falsely reported in Certified Payroll Report #31 commencing February 12, 2000 and ending February 18, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

i. falsely reported in Certified Payroll Report #32 commencing February 19, 2000 and ending February 25, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

j. falsely reported in Certified Payroll Report #33 commencing February 26, 2000 and ending March 3, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

k. falsely reported in Certified Payroll Report #34 commencing March 4, 2000 and ending March 10, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

l. falsely reported in Certified Payroll Report #35 commencing March 11, 2000 and ending March 17,

2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

m. falsely reported in Certified Payroll Report #36 commencing March 18, 2000 and ending March 24, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

n. falsely reported in Certified Payroll Report #37 commencing March 25, 2000 and ending March 31, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

o. falsely reported in Certified Payroll Report #38 commencing April 1, 2000 and ending April 7, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

p. falsely reported in Certified Payroll Report #39 commencing April 8, 2000 and ending April 14, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

q. falsely reported in Certified Payroll Report #40 commencing April 15, 2000 and ending April 21,

2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

r. falsely reported in Certified Payroll Report # 41 commencing April 22, 2000 and ending April 28, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

s. falsely reported in Certified Payroll Report #42 commencing April 29, 2000 and ending May 5, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

t. falsely reported in Certified Payroll Report #43 commencing May 6, 2000 and ending May 12, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

u. falsely reported in Certified Payroll Report #44 commencing May13, 2000 and ending May 19, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

v. falsely reported in Certified Payroll Report #45 commencing May 20, 2000 and ending May 26, 2000

that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

w. falsely reported in Certified Payroll Report #46 commencing May 27, 2000 and ending June 2, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

x. falsely reported in Certified Payroll Report #47 commencing June 3, 2000 and ending June 9, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

y. falsely reported in Certified Payroll Report #48 commencing June 10, 2000 and ending June 16, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

z. falsely reported in Certified Payroll Report #49 commencing June 17, 2000 and ending June 23, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

aa. falsely reported in Certified Payroll Report # 50 commencing June 24, 2000 and ending June 30, 2000

that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

bb. falsely reported in Certified Payroll Report # 51 commencing July 1, 2000 and ending July 7, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

cc. falsely reported in Certified Payroll Report # 52 commencing July 8, 2000 and ending July 14, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

dd. falsely reported in Certified Payroll Report # 53 commencing July 15, 2000 and ending July 21, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ee. falsely reported in Certified Payroll Report # 54 commencing July 22, 2000 and ending July 28, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ff. falsely reported in Certified Payroll Report # 55 commencing July 29, 2000 and ending August 4, 2000

that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

gg. falsely reported in Certified Payroll Report # 56 commencing August 5, 2000 and ending August 11, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

hh. falsely reported in Certified Payroll Report # 57 commencing August 12, 2000 and ending August 18, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ii. falsely reported in Certified Payroll Report # 58 commencing August 19, 2000 and ending August 25, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

jj. falsely reported in Certified Payroll Report # 59 commencing August 26, 2000 and ending September 1, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

kk. falsely reported in Certified Payroll Report # 60 commencing September 2, 2000 and ending September

8, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ll. falsely reported in Certified Payroll Report # 61 commencing September 9, 2000 and ending September 15, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

mm. falsely reported in Certified Payroll Report # 62 commencing September 16, 2000 and ending September 22, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

nn. falsely reported in Certified Payroll Report # 63 commencing September 23, 2000 and ending September 29, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

oo. falsely reported in Certified Payroll Report # 64 commencing September 30, 2000 and ending October 6, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

pp. falsely reported in Certified Payroll Report # 65 commencing October 7, 2000 and ending October 13,

2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

qq. falsely reported in Certified Payroll Report # 66 commencing October 14, 2000 and ending October 20, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

rr. falsely reported in Certified Payroll Report # 67 commencing October 21, 2000 and ending October 27, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ss. falsely reported in Certified Payroll Report # 68 commencing October 28, 2000 and ending November 3, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

tt. falsely reported in Certified Payroll Report # 69 commencing November 4, 2000 and ending November 10, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

uu. falsely reported in Certified Payroll Report # 70 commencing November 11, 2000 and ending

November 17, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

vv. falsely reported in Certified Payroll Report # 71 commencing November 18, 2000 and ending November 24, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ww. falsely reported in Certified Payroll Report # 72 commencing November 25, 2000 and ending December 1, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

xx. falsely reported in Certified Payroll Report # 73 commencing December 2, 2000 and ending December 8, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

yy. falsely reported in Certified Payroll Report # 75 commencing December 16, 2000 and ending December 22, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

zz. falsely reported in Certified Payroll Report # 76 commencing December 23, 2000 and ending

December 29, 2000 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

aaa. falsely reported in Certified Payroll Report # 77 commencing December 30, 2000 and ending January 5, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

bbb. falsely reported in Certified Payroll Report # 78 commencing January 6, 2001 and ending January 12, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ccc. falsely reported in Certified Payroll Report # 79 commencing January 13, 2001 and ending January 19, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ddd. falsely reported in Certified Payroll Report # 80 commencing January 20, 2001 and ending January 26, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

eee. falsely reported in Certified Payroll Report # 81 commencing January 27, 2001 and ending February 2,

2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

fff. falsely reported in Certified Payroll Report # 82 commencing February 3, 2001 and ending February 9, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ggg. falsely reported in Certified Payroll Report # 83 commencing February 10, 2001 and ending February 16, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

hhh. falsely reported in Certified Payroll Report # 84 commencing February 17, 2001 and ending February 23, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

iii. falsely reported in Certified Payroll Report # 85 commencing February 24, 2001 and ending March 2, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

jjj. falsely reported in Certified Payroll Report # 86 commencing March 3, 2001 and ending March 9, 2001

that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

kkk. falsely reported in Certified Payroll Report # 87 commencing March 10, 2001 and ending March 16, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

lll. falsely reported in Certified Payroll Report # 88 commencing March 17, 2001 and ending March 23, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

mmm. falsely reported in Certified Payroll Report # 89 commencing March 24, 2001 and ending March 30, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

nnn. falsely reported in Certified Payroll Report # 90 commencing March 31, 2001 and ending April 6, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ooo. falsely reported in Certified Payroll Report # 91 commencing April 7, 2001 and ending April 13, 2001

that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ppp. falsely reported in Certified Payroll Report # 92 commencing April 14, 2001 and ending April 20, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

qqq. falsely reported in Certified Payroll Report # 93 commencing April 21, 2001 and ending April 27, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

rrr. falsely reported in Certified Payroll Report # 94 commencing April 28, 2001 and ending May 4, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

sss. falsely reported in Certified Payroll Report # 95 commencing May 5, 2001 and ending May 11, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

ttt. falsely reported in Certified Payroll Report # 96 commencing May 12, 2001 and ending May 18, 2001

that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

uuu. falsely reported in Certified Payroll Report # 97 commencing May 19, 2001 and ending May 25, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

vvv. falsely reported in Certified Payroll Report # 99 commencing June 2, 2001 and ending June 8, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

www. falsely reported in Certified Payroll Report # 100 commencing June 9, 2001 and ending June 15, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

xxx. falsely reported in Certified Payroll Report # 101 commencing June 16, 2001 and ending June 22, 2001 that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

yyy. falsely reported in Certified Payroll Report # 102 commencing June 23, 2001 and ending June 29, 2001

that employee classified as black male had performed labor related work duties despite that the employees had performed electrical construction;

zzz. falsely reported in the aforementioned Certified Payroll Reports the value of wages earned and due and owing to an employee classified as black male who had performed labor and electrical construction;

aaaa. falsely reported in the aforementioned Certified Payroll Reports the value of wages earned and due and owing to an employees classified as caucasian males who had performed labor and electrical construction.

B. **Department of the Navy**

(1) Caused to be submitted to authorities of the Department of the Navy a competitive bid to procure electrical service to the D.L.A.I.C.P in connection with contract Nos. N62472-96-C-0002 and N62472-94-C-0012and falsely pledged to comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

(2) Caused to falsify Payroll Certifications for Public Work Projects as they relate to a public contract to provide electrical construction in connection with the aforementioned D.L.A.I.C.P project in the following, but not limited ways:

a. falsely reported in Certified Payroll Report # 2 commencing October 26, 1996 and ending November 1, 1996 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

b. falsely reported in Certified Payroll Report # 3 commencing November 2, 1996 and ending November 8, 1996 that employee Curtis had performed labor related work duties despite that the employee had performed electrical construction;

c. falsely reported in Certified Payroll Report # 4 commencing November 9, 1996 and ending November 15, 1996 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

d. falsely reported in Certified Payroll Report # 5 commencing November 16, 1996 and ending November 22, 1996 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

e. falsely reported in Certified Payroll Report # 6 commencing November 23, 1996 and ending November 29, 1996 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

f. falsely reported in Certified Payroll Report # 7 commencing November 30, 1996 and ending December 6, 1996 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

g. falsely reported in Certified Payroll Report # 8 commencing December 7, 1996 and ending December 13, 1996 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

h. falsely reported in Certified Payroll Report # 10 commencing December 21, 1996 and ending December 27, 1996 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

i. falsely reported in Certified Payroll Report # 11 commencing December 28, 1996 and ending January 3, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

j. falsely reported in Certified Payroll Report # 12 commencing January 4, 1997 and ending January 10, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

k. falsely reported in Certified Payroll Report # 15 commencing January 25, 1997 and ending January 31, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

l. falsely reported in Certified Payroll Report # 17 commencing February 8, 1997 and ending February 14, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

m. falsely reported in Certified Payroll Report # 18 commencing February 15, 1997 and ending February 21, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

n. falsely reported in Certified Payroll Report # 20 commencing March 1, 1997 and ending March 7, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

o. falsely reported in Certified Payroll Report # 21 commencing March 8, 1997 and ending March 14, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

p. falsely reported in Certified Payroll Report # 22 commencing March 15, 1997 and ending March 21, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

q. falsely reported in Certified Payroll Report # 23 commencing March 22, 1997 and ending March 28, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

r. falsely reported in Certified Payroll Report # 24 commencing March 28, 1997 and ending April 4, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

s. falsely reported in Certified Payroll Report # 25 commencing April 5, 1997 and ending April 11, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

t. falsely reported in Certified Payroll Report # 26 commencing April 12, 1997 and ending April 18, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

u. falsely reported in Certified Payroll Report # 27 commencing April 19, 1997 and ending April 25, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

v. falsely reported in Certified Payroll Report # 28 commencing April 26, 1997 and ending May 2, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

w. falsely reported in Certified Payroll Report # 29 commencing May 3, 1997 and ending May 9, 1997 that employee Curtis Bell had performed labor related work duties despite that the employees had performed electrical construction;

x. falsely reported in Certified Payroll Report # 32 commencing May 24, 1997 and ending May 30, 1997 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

y. falsely reported in the aforementioned Certified Payroll Reports the value of wages earned and due to employee Curtis Bell.

C. **Neshaminy School District**

(1) Caused to be submitted to authorities of the Neshaminy School District a competitive bid to procure the award of a public contract to supply electrical construction in connection with the Maple Point Middle School located Langhorne, PA and falsely pledged to comply with the Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

(2) Caused to falsify Payroll Certifications for Public Work Projects as they relate to a public contract to provide electrical construction in connection with the aforementioned Maple Point Middle School project in the following, but not limited ways:

a. falsely reported in Certified Payroll Report commencing May 8, 1993 and ending May 14, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

b. falsely reported in Certified Payroll Report commencing May 15, 1993 and ending May 21, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

c. falsely reported in Certified Payroll Report commencing May 29, 1993 and ending June 4, 1993 that employee Curtis Bell had performed labor related work

duties despite that the employee had performed electrical construction;

d. falsely reported in Certified Payroll Report commencing June 5, 1993 and ending June 11, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

e. falsely reported in Certified Payroll Report commencing June 12, 1993 and ending June 18, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

f. falsely reported in Certified Payroll Report commencing June 19, 1993 and ending June 25, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

g. falsely reported in Certified Payroll Report commencing June 26, 1993 and ending July 2, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

h. falsely reported in Certified Payroll Report commencing July 3, 1993 and ending July 9, 1993 that employee Curtis Bell had performed labor related work

duties despite that the employee had performed electrical construction;

i. falsely reported in Certified Payroll Report commencing July 10, 1993 and ending July 16, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

j. falsely reported in Certified Payroll Report commencing July 17, 1993 and ending July 23, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

k. falsely reported in Certified Payroll Report commencing July 24, 1993 and ending July 30, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

l. falsely reported in Certified Payroll Report commencing July 31, 1993 and ending August 6, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

m. falsely reported in Certified Payroll Report commencing August 7, 1993 and ending August 13, 1993 that employee Curtis Bell had performed labor related work

duties despite that the employee had performed electrical construction;

n. falsely reported in Certified Payroll Report commencing August 14, 1993 and ending August 20, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

o. falsely reported in Certified Payroll Report commencing August 21, 1993 and ending August 27, 1993 that employee Curtis Bell had performed labor related work duties despite that the employee had performed electrical construction;

p. falsely reported in the aforementioned Certified Payroll Reports the value of wages earned and due to employee Curtis Bell.

43. Defendant Boro Developers, Inc. received income derived from the pattern of racketeering activity above described and used or invested such income in the establishment or operation of defendant Boro Developers, Inc.

44. But for defendant Boro Developers, Inc.'s investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Bonavitacola Electric would have been able to compete with

defendant Boro Developers, Inc. on a fair and honest basis and awarded the contract for public work by the Ridley School District to provide electrical construction in connection with the aforementioned Ridley High School project.

45. As a proximate result of defendant Boro Developers, Inc.'s violation of 18 U.S.C.A. §1962(a), plaintiff Bonavitacola Electric has suffered damages in the way of a loss of income and revenue.

WHEREFORE, plaintiff Bonavitacola Electric prays for judgment against defendant Boro Developers, Inc. and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT II

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Bonavitacola Electric v Frederick J. Shapiro)

46. The plaintiff Bonavitacola Electric incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

47. At all relevant time hereto defendant Frederick J. Shapiro constituted a "person" capable of holding a legal or beneficial interest in property within the meaning of 18 U.S.C.A. §1961(3).

48. Defendant Frederick J. Shapiro, engaged in a course of conduct designed to obtain the award of electrical contracts from the Ridley and Neshaminy School Districts and the Department of the Navy by fraudulently subverting the Pennsylvania Prevailing Wage Act and/or the Davis Bacon Act. To effect the fraudulent scheme and carry out the contracted duties, defendant knowingly and repeatedly used the United States Mails and/or interstate wire transmissions in violation of 18 U.S.C.A. §1341 and §1343.

Defendant's repeated violations of 18 U.S.C.A. §1341 and §1343 constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. §1961(1)(B) and (5).

49. Defendant Frederick J. Shapiro engaged in those aforementioned fraudulent practices described in ¶ 41 of the Complaint in furtherance of a fraudulent scheme to subvert the Pennsylvania Prevailing Wage Act:, 43 P.S. §§165-1 et seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

50. Defendant Frederick J. Shapiro received income derived from the pattern of racketeering activity above described and used or invested such income in the establishment or operation of defendant Boro Developers, Inc.

51. But for defendant Frederick J. Shapiro's investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Bonavitacola Electric would have been able to compete with defendant Boro Developers, Inc. on a fair and honest basis and awarded the contract for public work by the Ridley School District to provide electrical construction in connection with the aforementioned Ridley High School project.

52. As a proximate result of defendant Frederick J. Shapiro's violation of 18 U.S.C.A. §1962(a), plaintiff Bonavitacola Electric has suffered damages in the way of loss of income and revenue.

WHEREFORE, the plaintiff Bonavitacola Electric prays for judgment against defendant Frederick J. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964( );

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT II

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Bonavitacola Electric v Bruce H. Shapiro)

53. The plaintiff Bonavitacola Electric incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

54. At all relevant time hereto defendant Bruce H. Shapiro constituted a "person" capable of holding a legal or beneficial interest in property within the meaning of 18 U.S.C.A. §1961(3).

55. Defendant Bruce H. Shapiro engaged in a course of conduct designed to obtain the award of electrical contracts from the Ridley and Neshaminy School Districts and the Department of the Navy by fraudulently subverting the Pennsylvania Prevailing Wage Act and/or the Davis Bacon Act. To effect the fraudulent scheme and carry out the contracted duties, defendant knowingly and repeatedly used the United States Mails and/or interstate wire transmissions in violation of 18 U.S.C.A. §1341 and §1343. Defendant's repeated violations of 18 U.S.C.A. §1341 and §1343 constitute a pattern of racketeering activity within the meaning of 18 U.S.C.A. §§1961(1)(B) and (5).

56. Defendant Bruce H. Shapiro engaged in those aforementioned fraudulent practices in described ¶ 41 of the Complaint in furtherance of a fraudulent scheme to subvert

the Pennsylvania Prevailing Wage Act:, 43 P.S. §165-1 et seq. and/or the Davis-Bacon Act, 40 U.S.C.A. §276 et seq.

57. Defendant Bruce H. Shapiro received income derived from the pattern of racketeering activity above described and used or invested such income in the establishment or operation of defendant Boro Developers, Inc.

58. But for defendant Bruce H. Shapiro's investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Bonavitacola Electric would have been able to compete with defendant Boro Developers, Inc. on a fair and honest basis and awarded the contract for public work by the Ridley School District to provide electrical construction in connection with the aforementioned Ridley High School project.

59. As a proximate result of defendant Bruce H. Shapiro's violation of 18 U.S.C.A. §1962(a), plaintiff Bonavitacola Electric has suffered damages in way of loss of income and revenue.

WHEREFORE plaintiff Bonavitacola Electric prays for judgment against defendant Bruce H. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT IV

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Local Union 654 v Boro Developers, Inc.)

60. The plaintiff Local Union 654 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

61. But for defendant Boro Developers, Inc.'s investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Local Union 654 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

62. As a proximate result of defendant Boro Developers, Inc.'s violation of 18 U.S.C.A. §1962(a) plaintiff Local Union 654 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 654 prays for judgment against defendant Boro Developers, Inc. and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT V

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Local Union 654 v Frederick J. Shapiro)

63. The plaintiff Local Union 654 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

64. But for defendant Frederick J. Shapiro's investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Local Union 654 would have received contributions to multi-employer benefit plans for employees employed in

connection with the aforementioned public work project awarded by the Ridley School District.

65. As a proximate result of defendant Frederick J. Shapiro's violation of 18 U.S.C.A. §1962(a) plaintiff Local Union 654 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 654 prays for judgment against defendant Frederick J. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT VI

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Local Union 654 v Bruce H. Shapiro)

66. The plaintiff Local Union 654 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

67. But for defendant Bruce H. Shapiro's investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Local Union 654 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

68. As a proximate result of defendant Bruce H. Shapiro's violation of 18 U.S.C.A. §1962(a) plaintiff Local Union 654 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 654 prays for judgment against defendant Bruce H. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT VII

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Local Union 98 v Boro Developers, Inc.)

69. The plaintiff Local Union 98 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

70. But for defendant Boro Developers, Inc.'s investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Local Union 98 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

71. As a proximate result of defendant Boro Developers, Inc.'s violation of 18 U.S.C.A. §1962(a) plaintiff Local Union 98 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 98 prays for judgment against defendant Boro Developers, Inc. and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43

P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT VIII

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Local Union 98 v Frederick J. Shapiro)

72. The plaintiff Local Union 98 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

73. But for defendant Frederick J. Shapiro's investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Local Union 98 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

74. As a proximate result of defendant Frederick J. Shapiro's violation of 18 U.S.C.A. §1962(a) plaintiff Local

Union 98 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 98 prays for judgment against defendant Frederick J. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT IX

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(a)]

(Local Union 98 v Bruce H. Shapiro)

75. The plaintiff Local Union 98 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

76. But for defendant Bruce H. Shapiro's investment of the income derived from the pattern of racketeering, as above described, into the establishment or operation of defendant Boro Developers, Inc., plaintiff Local Union 98 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

77. As a proximate result of defendant Bruce H. Shapiro's violation of 18 U.S.C.A. §1962(a) plaintiff Local Union 98 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 98 prays for judgment against defendant Bruce H. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. § §276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT X

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(c)]

(Bonavitacola Electric v Frederick J. Shapiro)

78. Plaintiff Bonavitacola Electric incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein;

79. At all relevant times hereto defendant Frederick J. Shapiro was employed or associated with Boro Developers, Inc. and conducted or participated in the conduct of the affairs of Boro Developers, Inc. through a pattern of racketeering as aforementioned.

80. But for defendant Frederick J. Shapiro's, falsifications and conduct alleged herein plaintiff

Bonavitacola Electric would have been able to compete with defendant Boro Developers, Inc. on a fair and honest basis and awarded the contract for public work by the Ridley School District to provide electrical construction on the aforementioned Ridley High School project.

81. As a proximate result of defendant Frederick J. Shapiro's violation of 18 U.S.C.A. §1962(c), plaintiff Bonavitacola Electric has suffered damages in the way of loss of income and revenue.

WHEREFORE, the plaintiff Bonavitacola Electric prays for judgment against defendant Frederick J. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT XI

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(c)]

(Bonavitacola Electric v Bruce H. Shapiro)

82. The plaintiff Bonavitacola Electric incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

83. At all relevant times hereto defendant Bruce H. Shapiro was employed or associated with Boro Developers, Inc. and conducted or participated in the conduct of the affairs of Boro Developers, Inc. through a pattern of racketeering as set forth above.

84. But for defendant Bruce H. Shapiro's falsifications and conduct alleged herein plaintiff Bonavitacola Electric would have been able to compete with defendant Boro Developers, Inc. on a fair and honest basis and awarded the contract for public work by the Ridley School District to provide electrical construction on the aforementioned Ridley High School project.

85. As a proximate result of defendant Bruce H. Shapiro's violation of 18 U S.C.A. §1962(c), plaintiff Bonavitacola Electric has suffered damages in the way of loss of income and revenue.

WHEREFORE, the plaintiff Bonavitacola Electric prays for judgment against defendant Bruce H. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT XII

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(c)]

(Local Union 654 v Frederick J. Shapiro)

86. The plaintiff Local Union 654 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

87. But for defendant Frederick J. Shapiro's, falsifications and conduct alleged herein plaintiff Local Union 654 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

88. As a proximate result of defendant Frederick J. Shapiro's violation of 18 U.S.C.A. §1962(c), plaintiff Local Union 654 has suffered damages in the way of loss of income and revenue.

WHEREFORE, the plaintiff Local Union 654 prays for judgment against defendant Frederick J. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT XIII

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(c)]

(Local Union 654 v Bruce H. Shapiro)

89. The plaintiff Local Union 654 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

90. But for defendant Bruce H. Shapiro's falsifications and conduct alleged herein plaintiff Local Union 654 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

91. As a proximate result of defendant Bruce H. Shapiro's violation of 18 U.S.C.A. §1962(c), plaintiff Local Union 654 has suffered damages in the way of loss of income and revenue.

WHEREFORE, the plaintiff Local Union 654 prays for judgment against defendant Bruce H. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT XIV

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(c)]

(Local Union 98 v Frederick J. Shapiro)

92. The plaintiff Local Union 98 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

93. But for defendant Frederick J. Shapiro's falsifications and conduct alleged herein plaintiff Local Union 98 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

94. As a proximate result of defendant Frederick J. Shapiro's violation of 18 U.S.C.A. §1962(c) plaintiff Local Union 98 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 98 prays for judgment against defendant Frederick J. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT XV

[Violations of Racketeer Influenced and Corrupt Organizations Act]

[§1962(c)]

(Local Union 98 v Bruce H. Shapiro)

95. The plaintiff Local Union 98 incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein;

96. But for defendant Bruce H. Shapiro's falsifications and conduct alleged herein plaintiff Local Union 98 would have received contributions to multi-employer benefit plans for employees employed in connection with the aforementioned public work project awarded by the Ridley School District.

97. As a proximate result of defendant Bruce H. Shapiro's violation of 18 U.S.C.A. §1962(c) plaintiff Local Union 98 has suffered damages in way of a loss of income and revenue.

WHEREFORE, plaintiff Local Union 98 prays for judgment against defendant Bruce H. Shapiro and the relief which follows:

I. That plaintiff be awarded actual damages as proven;

II. That plaintiff be awarded treble damages as provided by 18 U.S.C.A. §1964(c);

III. That plaintiff be awarded reasonable attorneys fees as provided by 18 U.S.C.A. §1964(c);

IV. That plaintiff be awarded the costs and expenses incurred in prosecuting this cause of action;

V. The defendant be enjoined from engaging in future violations of Pennsylvania Prevailing Wage Act, 43 P.S. §§165-1 et seq. and the Davis-Bacon Act, 40 U.S.C.A. §§276 et seq.

VI. That plaintiff be awarded and further relief as this Court may deem just and appropriate.

COUNT XVI

[Interference With Prospective Contractual Relations]

(Bonavitacola Electric v All Defendants)

98. The plaintiff Bonavitacola Electric incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

99. Defendants Boro Developers, Inc., Frederick J. Shapiro and Bruce J. Shapiro knew or otherwise reasonably should have known that plaintiff Bonavitacola Electric had a substantial opportunity to be awarded the public work contract by the Ridley School District to provide electrical construction to the aforementioned Ridley High School project.

100. With the purpose of preventing the plaintiff Bonavitacola Electric from being awarded the aforementioned public work contract in connection with Ridley High School defendants, acting jointly and severally, falsely certified that Boro Developers, Inc. was a responsible and qualified contractor, in that Boro Developers, Inc. would pay wages in compliance with the Prevailing Wage and/or Davis-Bacon Acts.

101. With the intent to interfere with the plaintiff Bonavitacola Electric's, prospective business relations with the Ridley School District and gain a business advantage by fraudulent, unlawful and unfair means, defendants acting jointly and severally, falsely certified that Boro Developers, Inc. was a responsible and qualified contractor, in that Boro

Developers, Inc. would pay wages in compliance with the Prevailing Wage and Davis Bacon Acts.

102. Defendants were not privileged or otherwise justified in interfering with the plaintiff Bonavitacola Electric's prospective business relations with the Ridley School District and gaining a business advantage by fraudulent, unlawful and unfair means.

103. As a direct and proximate result of defendants interference, plaintiff Bonavitacola Electric suffered damages in way of a loss of income and revenue.

104. The conduct of the defendants. as above described is outrageous and was exercised with a bad motive or with reckless indifference to the interests of plaintiff Bonavitacola Electric.

WHEREFORE, the plaintiff Bonavitacola Electric prays for judgment against defendants Boro Developers, Inc., Frederick J. Shapiro and Bruce J. Shapiro and the relief which follows:

I. That plaintiff be awarded compensatory damages;

II. That plaintiff be awarded punitive damages;

III. That plaintiff be awarded reasonable attorney's fees;

IV. That plaintiff be awarded the cost of prosecuting this claim;

V. That plaintiff be awarded any other relief that this Court may deem fair and just.

COUNT XVII

[Unjust Enrichment]

(Bonavitacola Electric v All Defendants)

105. The plaintiff Bonavitacola Electric incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

106. As a result of the fraudulent conduct of defendants Boro Developers, Inc., Frederick J. Shapiro and Bruce J. Shapiro, defendants have been unjustly enriched to the detriment of the plaintiff Bonavitacola Electric in an amount to be determined at trial.

WHEREFORE, the plaintiff Bonavitacola Electric prays for judgment against defendants Boro Developers, Inc. Frederick J. Shapiro and Bruce J. Shapiro and the relief which follows:

I. That plaintiff be awarded compensatory damages;

II. That plaintiff be awarded punitive damages;

III. That plaintiff be awarded reasonable attorney's fees;

IV. That plaintiff be awarded the cost of prosecuting this claim;

V. That a constructive trust be imposed on all profits fraudulently obtained by defendants as proven by the plaintiff;

VI. That plaintiff be awarded any other relief that this Court may deem fair and just.

COUNT XVIII

COUNT III - 43 P.S. §260 et seq.

(Curtis Bell v All Defendants)

107. Plaintiff Curtis Bell incorporates by reference the previous paragraphs of the Complaint as if set forth fully herein.

108. Plaintiff Curtis Bell acting in the capacity as an employee of defendant Boro Developers, Inc., performed electrical construction on behalf of Boro Developers, Inc., at the aforementioned Ridley High School, D.L.A.I.C.P., Maple Point Middle School job sites and job sites identified as McGuire Air Force, Camden Courthouse, U.S.D.A - Agriculture Department, and the U.S. Post Office.

109. Defendants Boro Developers, Inc., Frederick J. Shapiro and Bruce J. Shapiro agreed to pay plaintiff Curtis Bell those wages and multi-employer benefits due him as a result of his performance of electrical construction at the aforementioned job sites.

110. In violation of 43 Pa.C.S.A. §260 et seq. defendants Boro Developers, Inc., Frederick J. Shapiro and Bruce J. Shapiro failed to pay plaintiff Curtis Bell those wages and multi-employer benefits due him as a result of his performance of electrical construction at the aforementioned Ridley High School, D.L.A.I.C.P, Maple Point Middle School, McQuire Air Force, Camden Courthouse, U.S.D.A. - Agriculture Department, and the U.S. Post Office job sites.

WHEREFORE, plaintiff Curtis Bell prays for judgment in his favor and against defendants Boro Developers, Inc., Frederick J. Shapiro and Bruce J. Shapiro and the relief which follows:

I. That plaintiff be awarded compensatory damages as proven at trial;

II. That plaintiff be awarded punitive damages;

III. That plaintiff be awarded the cost of prosecuting this claim 43 P.S. §260.9a(f);

IV. That plaintiff be awarded reasonable attorney fees as provided by 43 P.S. §260.9a(f);

V. That plaintiff be awarded liquidated damages in the amount of 25% of the total amount of wage due as provided for by 43 P.S. §260.10;

VI. That plaintiff be awarded interest;

VII. That plaintiff be awarded further relief as this Court may deem appropriate.

Respectfully submitted,

By: "s/Steven F. Marino"

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Dated: "s/11/11/02"

No. 03-1667

JUL 14 2004

IN THE

Supreme Court of the United States

BONAVITACOLA ELECTRIC CONTRACTOR, INC., *et al.*,

Petitioners,

v.

BORO DEVELOPERS, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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COUNTER STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Did the Court of Appeals for the Third Circuit err in Affirming the District Court's grant of Respondents' Motion to Dismiss under Fed. R. Civ. P 12(b)(6) where the Amended Complaint failed to sufficiently plead predicate acts of mail and wire fraud with requisite particularity, did not allege the requisite "pattern of racketeering activity" and did not allege direct injury required for standing under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. §§ 1962(a) and 1962(c)?

STATEMENT PURSUANT TO RULE 29.6

Respondent, Boro Developers, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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COUNTER STATEMENT OF THE CASE

Procedural History

Bonavitacola Electric Contractor, Inc., Local Union No. 654, International Brotherhood of Electrical Workers, Local Union No. 98, International Brotherhood of Electrical Workers, and Curtis Bell (hereafter "Petitioners") initiated this action in the Eastern District of Pennsylvania on October 31, 2001. Boro Developers, Inc. and its two principal officers, Frederick J. Shapiro and Bruce Shapiro (hereafter "Respondents") were named as Defendants in the Court below.

On December 20, 2001, Respondents filed their initial Motion to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). The District Count, in its opinion, found the Complaint to be "woefully short" of meeting RICO requirements. The District Court stated that it believed it would be justified in dismissing the Complaint with prejudice. However, the Court allowed Petitioners to amend the Complaint to correct its deficiencies and provided detailed instructions to Petitioners on filing a sufficient RICO Complaint. *See Bonavitacola Electric Contractor, Inc., et al. v. Boro Developers, Inc., et al.*, 2002 WL 31388806 (E.D. Pa) (hereafter "*Bonavitacola I*") at 3-4.

Specifically, the District Court found that the Complaint did not state a claim under RICO because it did not contain any specific allegation of acts of mail or wire fraud, failed to explain how any alleged acts of the Defendants furthered the scheme to defraud or was incident to an essential part of that scheme and failed to contain sufficient allegations as to enterprise, relatedness, and continuity. *Id.* pg. 4.

On November 11, 2002, Petitioners filed an Amended Complaint. The Amended Complaint appears in the Petitioners' Appendix at pages 78-148. Despite the instructions by the Court in *Bonavitacola I,* Petitioners failed to file a "RICO Case Statement" and made very few substantive changes from the original Complaint. The Respondents moved to dismiss the Amended Complaint under Fed. R. Civ. P. 12 (b)(6). By Memorandum and Order dated February 12, 2003, the District Court dismissed the Amended Complaint with prejudice as to all RICO claims. The Court also dismissed the pendent state law claims without prejudice since there was no federal anchor claim to sustain jurisdiction. *See Bonavitacola Electric Contractor, Inc. v. Boro Developers, Inc.*, 2003 WL 329145 (E.D. Pa.) (hereafter "*Bonavitacola II*").

In *Bonavitacola II*, the District Court found that the Amended Complaint failed to plead predicate acts of mail and wire fraud with requisite particularity, failed to plead predicate acts that formed a "pattern of racketeering activity" and failed to sufficiently plead proximately caused injury (App. 32-50). On December 8, 2003, the Court of Appeals for the Third Circuit, whose judgment Petitioners seek to have reviewed, affirmed in an unpublished opinion which is in the Appendix at pages 1-18.

Facts

Bonavitacola Electric Contractors, Inc. ("Bonavitacola Electric") and Boro Developers, Inc. ("Boro") compete with each other for electrical construction, service and maintenance contracts awarded by public and private sector entities in Pennsylvania and New Jersey. (Amended

Complaint, ¶ 13, App. 83-84). On April 28, 1999 and thereafter, Locals 654 and 98 provided electrical workers to Bonavitacola Electric on public works projects awarded to it. (Amended Complaint, ¶¶ 14, 15, App. 84).

Between 1993 and 1999, Boro bid on, and was awarded, public works projects. The Petitioners identified a 1993 project undertaken by the Neshaminy School District (Amended Complaint, ¶ 28), a 1996 project undertaken by the Department of the Navy (Amended Complaint, ¶ 27) and a 1999 project undertaken by the Ridley School District (Amended Complaint, ¶ 26). Each of these projects required Boro to comply with Davis-Bacon Act, 40 U.S.C.A. § 276 *et seq.*, or the Pennsylvania Prevailing Wage Act ("PAPWA"), 43 P.S. § 165-1 *et seq.* (Amended Complaint ¶¶ 22-25, App. 85-87).

In its bids submitted to the respective owner of each of those projects, Boro represented that it would comply with the applicable law regarding prevailing wages. Petitioners claim these representations were false, and were made in order to deceive the said public entities by making it appear that Boro was a qualified and responsible bidder. (Amended Complaint, ¶ 31, App. 87-88).

Bonavitacola Electric submitted a bid for the Ridley School District project on April 28, 1999 and was the second lowest bidder on the project. Bonavitacola Electric therefore was not awarded the contract for that project. (Amended Complaint, ¶ 22, App. 88).

The Amended Complaint alleged that on February 20, 2001 Petitioners became aware that Respondents allegedly engaged in a practice of falsifying certified payroll records

and "other certifications" that were required to be submitted to the Ridley and Neshaminy School Districts, the Department of the Navy, and "others yet named." Mr. Bell claimed that on February 20, 2001 he became aware that Boro had failed to pay him an applicable wage for hours during which he performed electrical construction on the three projects identified in the Complaint dating back to 1993 and "others yet named." (Amended Complaint, ¶¶ 34-37, App. 88-89.) No information was provided concerning what transpired on February 20, 2001 which led to these so-called discoveries.

In the RICO counts, Petitioners alleged that Respondents engaged in a course of conduct designed to obtain the award of electrical contracts from the aforementioned entities by fraudulently subverting the Davis-Bacon and PAPWA by using the United States mail system and/or interstate wire transmissions. (*See, e.g.*, ¶¶ 41, 48 and 55, App. 90, 118, 121.)

Petitioners alleged that the acts of fraud consist of submitting competitive bids to authorities of the Ridley School District which falsely pledged to comply with the prevailing wage laws and falsified certain certified payroll reports in which either an employee identified as "black male" (Amended Complaint, ¶ 42A. (2)) or Mr. Bell (Amended Complaint, ¶¶ 42 B.(2) and 42 C.(2), App. 91) "had performed related work duties despite that the employee had performed electrical construction." (*sic.*)

Clarification of the Record

Petitioners have alleged in the Petition (page 5) at the Statement of the Case that "Boro Developers, Inc. underbid Bonavitacola Electric by approximately $81,000.00 and was awarded the public works contract by the Ridley School District to supply electrical construction to Ridley High School." The supposed "fact" that Boro underbid Bonavitacola Electric by approximately $81,000.00 is not found in the record facts below. Petitioners inserted this new "fact" in an improper attempt to cure one of the deficiencies in the Complaint. The Third Circuit Court, in its opinion, noted that the Amended Complaint does not indicate the extent to which Boro's bid was lower than Bonavitacola's bid or whether Boro's bid had lower labor costs than Bonavitacola's bid (App. pg. 14).

REASONS FOR DENYING THE PETITION

I. PETITIONERS HAVE NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT.

"Review on a Writ of Certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a Writ of Certiorari will be granted only for compelling reasons." *Id.*

Petitioners have not presented any compelling reason for this Court to exercise discretionary jurisdiction over this appeal of the dismissal of this action under Fed. R. Civ. P. 12 (b)(6). Petitioners have not alleged that the decision in the Court below conflicts with any decision of this Court, any Court of Appeals, or any Court anywhere in the world for that matter.

Petitioners assert simply that the Lower Courts erred in finding that the particular facts alleged or omitted by the Petitioners failed to meet RICO pleading requirements. In making such argument, Petitioners do not cite any conflicting cases from Circuit Courts, State, County or this Court. Indeed, in its decision in this case, the Third Circuit of Appeals relied upon the decisions of this Court in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985) and *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989). Petitioner has not alleged any reasons to revisit these cases.

Petitioner cannot and did not allege that the Lower Courts have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a Lower Court, as to call for an exercise of the Court's supervisory power.

The District Court allowed the Petitioners to amend the Complaint and provided detailed instructions on properly pleading a RICO action. Following the dismissal of the action after the Amended Complaint was filed, the Third Circuit Court of Appeals exercised plenary review where Respondents' appeal was fully argued and denied. Petitioners offer no reason to disregard and reevaluate the Lower Courts' decisions.

II. THE LOWER COURTS DID NOT ERR IN FINDING THAT THE AMENDED COMPLAINT FAILED TO STATE A CLAIM UNDER RICO SECTIONS 1962(a) AND 1962(c).

The Third Circuit Court of Appeals affirmed the judgment of the District Court concluding that the Amended Complaint failed to allege predicate acts of mail and wire fraud sufficiently, failed to allege the requisite pattern of racketeering activity and did not allege direct injury required for standing under RICO (Racketeer Influenced and Corrupt Organizations Act), 18 U.S.C. §§ 1961-68.

Mail and Wire Fraud as Predicate Acts

The Amended Complaint alleges as predicate acts, that Boro knowingly and repeatedly used the United States mails and/or interstate wire transmissions in violation of 18 U.S.C.A. § 1341 and § 1343 (Amended Complaint at ¶ 41, App. pg. 90). However, the Third Circuit Court of Appeals as well as the Lower Court found that the Amended Complaint does not identify any particular mail or wire transmissions or allege how any mail or wire transmissions are connected to a fraudulent scheme. (App. pg 9.) Fed. R. Civ. P. 9(b) requires that a Plaintiff plead with particularity, the circumstances of the alleged fraud in order to place Defendants on notice of the precise misconduct with which they are charged and to safeguard against spurious charges of immoral or fraudulent behavior. *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 742 F.2d 786, 791 (3d Cir. 1984), *cert. denied*, 469 U.S. 1211, 105 S. Ct. 1179 (1985). This generally requires a Plaintiff to plead the "who, what, when, and where details of the alleged fraud." *Id.* The Amended Complaint also alleged that three bids

contained a fraudulent promise to comply with the prevailing wage law and that Boro falsified over one-hundred certified payroll reports in connection with the three contracts.

The Third Circuit correctly found that even if Petitioners had alleged in the Amended Complaint that the certified payroll reports were the underlying U.S. mail or interstate wire transmissions, "it is not clear at all from the Amended Complaint how they relate to an underlying fraudulent scheme." (App. pg. 10.) It is clear that the Amended Complaint contains no facts which connect the certified payroll reports to the alleged purpose of the fraudulent scheme which was to obtain the award of contracts. The certified payroll reports are submitted after the contract is awarded and the work begins. The Lower Courts correctly ruled that the conclusory allegations did not meet the well-established standards for pleading circumstances constituting fraud with particularity.

Pattern of Racketeering

The lower courts properly followed this Court's decision in *H.J. Inc. v. Northwestern Bell Tel. Co., Id.*, in finding that the Amended Complaint did not allege fraud that was related or continuous so as to plead sufficiently the "pattern of racketeering activity" element of a RICO claim. In *H.J. Inc., id.*, this Court held that a RICO Plaintiff must allege predicate acts that are related and amount to or pose a threat of continued criminal activity. *Id.*, 492 U.S. at 239. Further, this Court held that predicate acts are related if they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." *H.J., Inc., id.* 492 U.S. at 240.

As noted by the Third Circuit Court of Appeals, the Amended Complaint does not allege that the three alleged fraudulent bids or transactions are related to each other. The Complaint does not allege a common plan with allegations detailing the transactions' similar results, participants, victims, manner of commission, or other detailed characteristics to satisfy the relatedness requirement of this Count's ruling in *H.J., Inc.*

The Court also reviewed this matter using the continuity prong of the test for a "pattern of racketeering activity" as referenced in this Court's decision in *H.J., Inc.* The Amended Complaint fails to adequately plead either open-ended or closed-ended continuity. There were no allegations in the Complaint to suggest that the alleged fraudulent conduct extended beyond the life of the matter before the Court, and there are no allegations in the Complaint from which an inference or suggestion of a future threat of fraudulent conduct can be found. As a result, the Lower Courts were correct in ruling that the Amended Complaint did not allege fraud that is related or continuous as to plead sufficiently the "pattern of racketeering" element of a RICO claim.

Injury Required for Standing

A RICO Plaintiff must show that the alleged RICO violations proximately caused injury to the Plaintiff's business property to have standing. An indirect injury remotely caused by the RICO violation will not satisfy the proximate cause requirement. *Holmes v. Sec. Investor Protection Corp.*, 503 U.S. 258, 268 (1992). Once again, the Circuit Court as well as the Lower Court analyzed the Amended Complaint for the alleged injury using the

established case law of this Court. As alleged in the Complaint, Bonavitacola Electric's alleged injury is that it did not win certain bids and consequently lost income and profits that it would have earned if it had been awarded the contracts, specifically the Ridley School District contract. The Labor Unions' injury was alleged to be the fact that they would have received additional contributions to their multi-employer benefit plans for employees if Bonavitacola had been awarded the contract.

The Amended Complaint does not allege how Boro's supposedly false promise to comply with prevailing wage law had any influence on the award of the contract and failure to award the contract to Bonavitacola Electric. There are many factors which go into the award of a contract, just as there are many factors which go into the creation of a bid for a contract. The Lower Courts correctly noted that the Amended Complaint does not indicate the extent to which Boro's bid was lower than Bonavitacola or whether Boro's bid had lower labor costs than Bonavitacola Electric's bid. Accordingly, the Third Circuit Court of Appeals and District Court correctly found that the Petitioners failed to sufficiently plead a proximately caused injury, and therefore lack standing to bring this civil RICO action.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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